TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 214.

FRED C. FISHER AND CHARLES C. COHN, ON BEHALF OF FELIX BARCELON, PLAINTIFFS IN ERROR,

vs.

COLONEL DAVID J. BAKER, JR., AND CAPTAIN JOHN DOE THOMPSON.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED MARCH 1, 1906.

(20,111.)

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INDEX.

	Original.	Print.
Petition for writ of *habeas corpus*	1	1
Preliminary investigation in court of first instance	4	3
Testimony of Felix Barcelon	4	3
Order to show cause	13	8
Answer of respondents	14	9
Exhibit A—Excerpt from the minutes of the Philippine Commission of January 31, 1905	18	10
B—Executive order No. 6, January 31, 1905	19	11
C—Telegram from Aguilera, governor, to Assistant Attorney General Harvey, August 4, 1905	20	12
Telegram from Thompson to Harvey, Attorney General, August 7, 1905	21	12
Telegram from Escribano to Harvey, fiscal general, August 7, 1905	22	12
D—Declaration of Felix Barcelon	23	13
F—Testimony of Felix Barcelon	26	14
Reply to answer showing authority to make application	38	21
Opinion by Johnson, J.	40	22
Dissenting opinion by Willard, J.	73	42

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	Original.	Print.
Exception to judgment	77	44
Petition for writ of error	79	45
Assignment of errors	80	46
Writ of error	82	47
Citation and service	84	48
Bond on writ of error	85	48
Stipulation as to making up record	87	50
Stipulation as to record	88	50
Clerk's certificate and return to writ of error	89	51

1 UNITED STATES OF AMERICA, *Philippine Islands.*

In the Supreme Court of the Philippine Islands.

In the Matter of the Application for Writ of *Habeas Corpus* on Behalf of FELIX BARCELON.

Now comes Fred C. Fisher and Charles C. Cohn on behalf of the above named Felix Barcelon and respectfully show to the Honorable Court:

I.

That said Felix Barcelon is detained and restrained of his liberty at the town of Batangas, Province of Batangas, Philippine Islands.

II.

That the person by whom the said Felix Barcelon is so detained and restrained of his liberty is John Doe Thompson, Captain of Philippines Constabulary, acting under and in pursuance of the orders of David J. Baker, Jr., Colonel of Philippines Constabulary.

III.

That the detention and restraint of the said Felix Barcelon is wholly without legal authority therefor, as more fully appears from the recital of the causes of said detention, which are as follows:

On the 19th day of April, 1905, in the Court of First Instance of the Province of Batangas, P. I., at the hearing of the preliminary investigation in the cause of the United States *vs.* Pedro A. Roxas, then pending before said court at a regular session thereof, the said Felix Barcelon was duly called, sworn and examined as a
2 witness for the prosecution in said cause. That immediately after the conclusion of said examination of said Felix Barcelon as such witness, as aforesaid, the person of said Felix Barcelon was ordered by said court of First Instance of the Province of Batangas into the custody of the sheriff of said province, under and by virtue of the provisions of section 39 of General Order No. 58: thereafter, to-wit, on the 22nd day of April, 1905, upon the conclusion of said preliminary investigation the said Felix Barcelon was ordered released and liberated of all restraint by said Court of First Instance. That thereupon the said Felix Barcelon was liberated and released of all restraint. That immediately thereafter the said Felix Barcelon was unlawfully detained and restrained of his liberty by orders of David J. Baker, Jr., Colonel of Philippines Constabulary, and the said Felix Barcelon has ever since continued to be and now is detained and restrained of his liberty under and by virtue of such orders aforesaid.

That a copy of the declaration of the said Felix Barcelon at said preliminary examination above referred to is hereto annexed and made a part hereof. That petitioners are informed and verily be-

lieve that the sole and only cause and motive of the detention and restraint of the said Felix Barcelon is the desire to cause and persuade the said Filix Barcelon to retract the statements contained in said declaration hereto annexed and to declare to the contrary thereof.

IV.

That the detention and restraint of said Felix Barcelon is not under or by virtue of any process issued by any Court or Magistrate, nor by virtue of any judgment or order of any Court of Record, nor of any Court, nor of any Magistrate whatsoever.

V.

That there has not existed during any of the times in this petition mentioned, and there does not now exist, in the said Prov-
3 ince of Batangas, P. I., nor in any part thereof, rebellion, insurrection, or invasion, nor any of them in any form or degree; and that all of the courts of law organized and provided by law for the Province of Batangas have been, at all of the times hereinabove mentioned, in the full and complete exercise of their functions without interruption of any nature or kind.

Wherefore your petitioners pray that a writ of *habeas corpus* be issued requiring the said John Doe Thompson, Captain of Philippines Constabulary, and David J. Baker, Jr., Colonel of Philippines Constabulary, to bring before this honorable court the person of said Felix Barcelon, and that after full hearing in accordance with law the said Felix Barcelon be liberated and released from all restraint and detention, and that respondents be enjoined from any and all interference with the personal liberty of said Felix Barcelon, and that costs of suit be taxed against said respondents.

Manila, August 2, 1905.

(S'g'd) FRED C. FISHER.
(S'g'd) CHARLES C. COHN.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Fred C. Fisher and Charles C. Cohn, being duly sworn, each for himself and not one for the other, deposes and says that he has read the foregoing petition and knows the contents thereof; that all the facts therein stated upon the knowledge of the affiant are true and that as to the facts averred upon information and belief affiant verily believes them to be true.

(S'g'd) F. C. FISHER.
(S'g'd) CHARLES C. COHN.

Signed and sworn to before me this 2d day of August, 1905. Fred C. Fisher exhibited to me his certificate of registration No. A20345 issued in Manila the 3d day of February 1905 and Charles C. Cohn his certificate of registration No. 207777 issued in Manila the 31st day of July, 1905.

(S'g'd) J. E. BLANCO,
Clerk of the Supreme Court of the P. I.,
Ex-officio Notary Public.

Filed in the clerk's office of the Supreme Court of the Philippine Islands this 2 day of Aug., 1905, 11.46 a. m.
(Stamp Sig.) J. E. BLANCO,
(S'g'd) By H. D. McGEORGE, *Deputy*.

4 UNITED STATES OF AMERICA, *Philippine Islands.*

In the Court of First Instance of the Province of Batangas.

Preliminary Investigation.

THE UNITED STATES, Complainant,
vs.
D. PEDRO A. ROXAS, Accused.

Questions by Attorney General Harvey.

Testimony of Witness Felix Barcelon.

Direct examination by Ass't Attorney General HARVEY:

Q. Where were you born?
A. In Nasugbu, Sir, in the Province of Batangas.
Q. Have you lived continuously in Nasugbu since your birth?
A. Yes, Sir.
Q. What is your occupation?
A. Laborer.
Q. What kind of labor?
A. Cultivating lands.
Q. What lands do you cultivate?
A. Those of Don Pedro Roxas.
Q. Where is the Hacienda in which you have lands to cultivate?
A. In Nasugbu.
Q. Are you a tenant, employee, or in what capacity do you cultivate the lands?
A. I am a tenant.
Q. Do you know Don Pedro A. Roxas, the accused in this case?
5 A. Yes, sir.
Q. How long have you known him?
A. Since he was born, when he came to Nasugbu.
Q. Do you know one Florencio Oliva?
A. Yes, sir.
Q. How long have you known him?
A. Since he has been about Nasugbu.
Q. Do you know how many years, more or less, you have known him?
A. I do not remember, sir.
Q. What is the occupation of Don Florencio Oliva?
A. He is in charge of the Hacienda.
Q. The Hacienda of Nasugbu, or what hacienda.
A. The Hacienda of Nasugbu.

Q. Is he in charge of the Hacienda of the Roxas family or not?
A. The Hacienda of the Roxas family.
Q. Has Don Pedro A. Roxas, the accused in this case, visited this Hacienda or not?
A. Yes, sir.
Q. Do you know one Julian Ramos?
A. No, sir.
Q. Have you seen him?
A. No, sir.
Q. Do you remember the last visit of Don Pedro A. Roxas at the Hacienda of Nasugbu?
A. Yes, sir.
Q. When, or on what date, approximately?
A. According to my calculation, in April.
Q. Of what year?
A. Of this year.
Q. Did you see Don Pedro Roxas during that visit?
6 A. Yes, sir.
Q. When and where?
A. In the ranch house upon his last arrival.
Q. During this visit did you or did you not go to some part of the Hacienda in company with Don Pedro Roxas or Don Florencio Oliva?
A. Yes, sir.
Q. Where did you go and who accompanied you?
A. Don Pedro, Don Florencio, Modesto Villadolid; we went to visit the place called Maugat.
Q. In what barrio is Maugat?
A. It is next to Prensa.
Q. After arriving at Prensa where did you go to?
A. We visited the engine of Captain Marcelo.
Q. In what place or site?
A. In the same place,—Maugat.
Q. What kind of engine do you refer to?
A. It is a broken steam engine, made to grind sugar cane.
Q. Who accompanied you and Don Pedro Roxas on that visit to Prensa?
A. There were four of us.
Q. State the names to the Court if you know them?
A. Pedro Salenguit, Catalino Villadolid, Mariano Barcelon and I, Felix Barcelon.
Q. After the visit to Prensa and the engine where did you go?
A. We passed by the places called Quinamaalat and in Dayap the new Prensa.
Q. After visiting the new Prensa where did you go?
A. We visited those who were digging in the ground to make a ditch.
Q. And afterwards, where did you go?
A. We returned to town.
7 Q. Do you know the former barrio of Bunducan?
A. Yes, sir.

Q. Are the places mentioned by you, or any of them, in the former barrio of Bunducan or not?
A. We did not go through that barrio.
Q. Do you know the place called Alas-as?
A. Yes, sir.
Q. Where is that place?
A. It is next to Barac.
Q. On that day did you visit the place called Alas-as?
A. No, sir.

Cross-examination by Attorney FISHER:

Q. Where do you come from now?
A. From upstairs.
Q. Where is this place you call upstairs?
A. In the upper story of this courtroom.
Q. When did you come to the town of Batangas?
A. I went on a steamer and we came here. I do not know if it was Friday or some other day.
Q. Where have you been since then?
A. In the barracks at Lipa.
Q. Have you been at liberty or a prisoner?
A. A prisoner, sir.
Q. How long have you been a prisoner?
A. Since they arrested us in Nasugbu.
Q. Who detained you in Nasugbu?
A. I was taken up by a person called Lieutenant Juan, who is my nephew.
Q. After being taken on board the steamer by Lieutenant Juan did you again go ashore in Nasugbu?
A. No, sir.
—. Were you questioned on board the steamer concerning this Julian Ramos?
8 A. Yes, sir.
Q. Is it not true that this examination to which you were subjected was had down in the hold close to the coal bunkers of the steamer?
A. Yes, sir.
Q. Is it likewise true that no American was then present, but that those who conducted the examination there in the hold of the ship were all Filipinos?
A. There was no American there.
Q. State how this examination was carried on; in what manner; how was it done?

Mr. HARVEY: I object to the continuation of the cross-examination because the questions are improper and are not true cross-examination and because it is not the time to make a cross-examination of this kind.

JUDGE: In view of the objection of the Government and the Court understanding that the present hearing or preliminary investigation is under Section 13 of G. O. 58, the defense is not authorized to cross-examine the witnesses presented by the Government as an abso-

lute right—therefore the objection is sustained—the parties are notified that the Court is desirous of ascertaining as far as may be possible the character of every witness who is presented to the Court and can within certain limits permit the defense to cross-examine the witnesses.

Attorney COHN: We offer to prove by means of the cross-examination of this witness that he has not seen nor has he spoken upon the subject matter of this case with either the accused or any one of the attorneys for the defense, nor Don Florencio Oliva; that the witness has been brought to this preliminary investigation because of certain statements of his made against the accused Pedro A. Roxas
9 which were obtained by force of personal violence and maltreatment inflicted upon the person of the witness aboard the Steamer "Mindanao" in the vicinity of the town of Nasugbu; that those statements were completely false and were made in order to escape from said maltreatment. The offer is made at this time in order to avoid every possiblity of rejecting the statement of the witness to this effect on the ground that the same had been procured by the intervention of the accused or of other persons at the latter's instance.

JUDGE: In view of the offer made by the defense the Court is desirous that the cross-examination continue in conformity with the said offer. Nevertheless, the defense is notified that a preliminary investigation is being held and we are not taking proofs upon a full trial. Proceed, Mr. Fisher. Let the witness answer the question objected to. Read the question. State how this examination was carried on, in what form, how was it done?

A. I told the truth to Lieut. Ramos and he did not wish to listen to me and he asked me if it was true that Don Pedro Roxas gave me twenty pesos which he delivered me and I answered that it was not true. My God! Holy Virgin! How they beat me! And he said to me, "Do not deny it because there is a person who says so" and then they brought Pedro Cañete into my presence and I asked him what for and he answered me that I should tell the truth, and then they made him go up above, and——

Prosecutor HARVEY: I object to the cross-examination because it is all hearsay and does not relate to acts committed by the accused and is completely foreign to the matter in hand.

JUDGE: The objection is overruled. Let the witness proceed with his narration.

WITNESS: And I answered that I had not given anything,—that I was not there—and then he said to me "Agree, now" and I agreed and gave this statement which is in the possession of the
10 Judge, on account of fear, although nothing has been done to me. They asked me if they had not maltreated me or given me water and I answered that they had not and then I stated what Pedro Cañete stated concerning what Don Pedro Roxas gave me and I agreed because I was then bruised and I decided to tell all here before the Judge.

Q. To what Judge do you say that you delivered or made a statement?

A. To this gentleman, there in Lipa. (Indicating with his hand Mr. Harvey and Mr. Blanchard.)

Redirect examination by Prosecuting Attorney HARVEY:

Q. After your arrival in Lipa did you make a statement before this gentleman, Mr. Blanchard, and before me, Mr. Harvey, and others?

A. Only before this gentleman, (indicating Mr. Blanchard) and before Lieut. Ramos, and other persons whom I do not know.

Q. Was I not present at the taking of your statement and is it not true that I myself put the questions to you?

A. Yes, sir; you were present.

Q. And after your statement the same was read in your presence?

A. Yes, sir.

Q. Do you know this signature here set forth? (Indicating to him the document Letter A.)

A. Yes, sir; that is my signature.

Prosecuting Attorney HARVEY: I offer as evidence in this investigation the document identified by the witness marked with the letter A.

JUDGE: Let it be admitted if there is no objection.

ATTORNEY FOR [illegible]VENDANT: We object to the admission of this document because by it the prosecution seeks to impeach its own witness.

Prosecuting Attorney HARVEY: During the cross-examina-
11 tion by the defense, during this morning session, the prosecution objected to the cross-examination on the ground that it was not proper cross-examination; that the cross-questions of the defense dealt with another matter distinct from that which is the object of the investigation and also that the statements of the witness in answer to the questions of the defense were hearsay and completely foreign to the matter under investigation before the Court. As the Court has permitted the defense to cross-question upon these points against the objection of the prosecution the latter now asks permission to question the witness upon the same points.

Attorney FISHER: I withdraw the objection.

JUDGE: Let the said document be admitted and filed. (To the witness:) You, Felix Barcelon: Let us see. The present statement which you made in open court this morning and which is in the following terms,—is it true or not?

Clerk's note.—Thereupon by order of the Court there was read to the witness his entire statement appearing at pages 2 to 6.

JUDGE: Pay strict attention in order that you may ratify said statement or have the errors corrected, if there are such.

WITNESS: After having been taken on board the steamer I went ashore in Nasugbu to get some clothes and in this respect I correct what I said in my statement to the effect that I did not go ashore and in all else I ratify it.

JUDGE: Then it is true or is not true that you have seen Julian Ramos, the so-called leader of brigands?

A. No, sir.

JUDGE: What do you mean to say, is it true or is it not true?

A. I have not seen him.

JUDGE: And concerning this sum of twenty pesos, Conant, did Don Pedro Roxas give the same to you or not?

12 A. Nothing, sir.

Prosecuting Attorney HARVEY: When you were aboard the steamer were you awaiting the oppurtunity to state the truth before Mr. Blanchard and before me, as you have stated this mo*n*ring?

DEFENSE: We object upon the ground that the witness has not made such a statement.

Mr. HARVEY: I withdraw the question.

This declaration having been read to the witness was found by him to be correct and was signed by him and by his Honor the Judge to which I certify.

(S'g'd) FELIX BARCELON.

13 UNITED STATES OF AMERICA.

The Supreme Court of the Philippine Islands.

Extract from the Minutes of the Session of Aug. 2, 1905.

"Having considered the writing filed by Messrs. Fred C. Fisher and Charles C. Cohn, praying for the issuance of a writ of *habeas corpus* in favor of Felix Barcelon, who, as is alleged, is unlawfully detained and deprived of his liberty in the town of Batangas, Province of Batangas, Philippine Islands, by a Captain of the Insular Police, in obedience to the instructions of David J. Baker, Jr., Colonel of said Corps, in order that said Felix Barcelon may be brought before this Court and, after a full hearing in the matter, that he be placed immediately at liberty and that the said Captain of the Constabulary, as well as the aforesaid Colonel Baker, be prohibited from interfering in any manner with the liberty of the said Felix Barcelon, and that they be condemned to pay the costs, the Court, duly informed, decreed that it be ordered, and it hereby is ordered, of the said Captain of the Insular Police and of David J. Baker, Jr., Colonel of said Corps, that they appear in person, or by representatives, before this Court on Friday, the 4th day of the present month, at the hour of 9.00 o'clock, a. m. of said date, to show cause why the writ of *habeas corpus* should not be issued."

J. E. BLANCO,
Clerk of the Supreme Court, P. I.,
By H. D. McGEORGE, *Deputy.*

14 THE UNITED STATES OF AMERICA.

In the Supreme Court of the Philippine Islands.

In the Matter of the Application by FRED C. FISHER and CHARLES C. COHN for a Writ of *Habeas Corpus* in Behalf of Felix Barcelon.

Answer of Respondents.

The undersigned, in representation of Colonel David J. Baker, Jr., and Captain W. E. Thompson, respondents, in answer to the order of this Honorable Court to appear and show cause why the writ of *habeas corpus* should not issue as requested, respectfully states to the Court as follows:

I. That the writ of *habeas corpus* should not issue upon the application filed herein, because the Court is without jurisdiction or authority to grant the privilege of the writ of *habeas corpus* in the Province of Batangas, for the reason that on January 31, 1905, the Governor General, pursuant to the resolutions and request of the Philippine Commission, suspended such writ in the provinces of Cavite and Batangas, in accordance with the provisions of section five of the Act of Congress known as the "Philippine Bill," the Philippine Commission and the Governor General basing such suspension upon the fact that certain organized bands of ladrones in said provinces are in open insurrection against the constituted authorities; and the said bands, or parts of them and some of their
15 leaders are still in open resistance to the constituted authorities. A copy of said resolutions is hereto attached, ma ed "A," and a copy of the order of the Governor General, issued pursuant to said resolutions, suspending such writ in said two provinces, and setting forth the grounds for such suspension, is also attached, marked "B," and said exhibits are made a part of this answer.

II. Not waiving the question of jurisdiction, the respondents state that it is true that Felix Barcelon was detained in the month of April, 1905, by order of Colonel David J. Baker, Jr., Assistant Chief of the Philippines Constabulary, and that said Barcelon is now detained under the surveillance of Captain W. E. Thompson, Senior Inspector of Constabulary in the Province of Batangas; but that the writ of *habeas corpus* in behalf of said Barcelon should not issue upon the application of Fred C. Fisher and Charles C. Cohn, because the said Barcelon states that such surveillance is with his consent and that he is satisfied to remain with Captain Thompson, and that he has never authorized or requested any lawyer to represent him in the Supreme Court or before any other tribunal in *habeas corpus* proceedings, and that if same is being done, it is without his consent and against his wishes, as will more clearly appear from the telegrams attached hereto, marked "C," "CA" and "CB," respectively, and made a part of this answer.

III. Not waiving the questions of jurisdiction and the authority of Messrs. Fred C. Fisher and Charles C. Cohn to make the appli-

cation herein without the knowledge, consent or approval of said Felix Barcelon, and against his wishes, the respondents respectfully submit the following statement of facts:

That Felix Barcelon is a witness for the prosecution in
16 the case of the United States against Pedro A. Roxas, pending in the Court of First Instance of Batangas Province, in which cause the applicants Fred. C. Fisher and Charles C. Cohn are attorneys for the defense.

That in the early part of April, 1905, said Filix Barcelon and others made declarations that said Roxas had sent sums of money to a band of ladrones operating within the Roxas Hacienda in the Municipality of Nasugbu, Province of Batangas.

That thereafter, on or about the 15th day of April, 1905 in the town of Lipa, Province of Batangas, the said Felix Barcelon made a declaration in writing in the Tagalog language, which is attached to the record in the Court of First Instance, but a substantially correct translation thereof is attached hereto, marked "D," and made a part of this answer.

That thereafter, on Monday, April 17, 1905, the said Felix Barcelon was called as a witness for the prosecution in the preliminary examination of the cause against Pedro A. Roxas, and thereupon testified as set forth in the application herein.

That thereafter, on or about May 8, 1905, said Felix Barcelon made a declaration in writing in the Tagalog language which is hereto attached, marked "E," together with the tra-slation of same, marked "F," and which are made a part of this answer.

That the said Felix Barcelon was a tenant upon the Roxas Hacienda in the Municipality of Nasugbu, and because of intimidations and threats to kill the said Barcelon if he did not deny his declarations made to the authorities at Nasugbu and testify before the Court that he had been maltreated and compelled to make such declarations, it was then and is now deemed necessary, in order to
17 protect the said Barcelon from such threats, intimidations, and possible assassination, that the said Barcelon be kept under the care and surveillance of some authority capable of giving him protection, and he is now under the care and protection of Captain W. E. Thomson, is living in the house of Captain Thomson, and says that he is satisfied to remain there.

Respectfully submitted,

(S'g'd) GEO. R. HARVEY,
Assistant Attorney General,
In Representation of the Respondents.

18 "A."

Excerpt from the Minutes of the Philippine Commission of January 31st, 1905.

Whereas, certain organized bands of ladrones exist in the Provinces of Cavite and Batangas who are levying forced contributions upon the people, who frequently require them, under compulsion,

to join their band, and who kill or maim in the most barbarous manner those who fail to respond to their unlawful demands and are therefore terrifying the lawabiding and inoffensive people of those provinces; and

Whereas, these bands have in several instances attacked police and Constabulary detachments and are in open insurrection against the constituted authorities; and

Whereas, it is believed that these bands have numerous agents and confederates living within the municipalities of the said provinces; and

Whereas, because of the foregoing conditions there exists a state of insecurity and terrorism among the people which makes it impossible in the ordinary way to conduct preliminary investigations before justices of the peace and other judicial officers:

Now, therefore be it resolved, That, the public safety requiring it, the Civil Governor is hereby authorized and requested to suspend the writ of *habeas corpus* in the provinces of Cavite and Batangas.

[Seal, Philippine Commission.]

Certified,
(S'g'd) C. W. CALVIN,
Recorder, Philippine Commission.

19 "B."

Office of the Civil Governor of the Philippine Islands.

Executive Order No. 6.

MANILA, *January* 31, 1905.

Whereas certain organized bands of ladrones exist in the provinces of Cavite and Batangas who are levying forced contributions upon the people, who frequently require them under compulsion to join their bands, and who kill or maim in the most barbarious manner those who fail to respond to their unlawful demands and are therefore terrorizing the lawabiding and inoffensive people of those provinces; and

Whereas these bands have in several instances attacked police and Constabulary detachments, and are in open insurrection against the constituted authorities, and it is believed that the said bands have numerous agents and confederates living within the municipalities of the said provinces; and

Whereas, because of the foregoing conditions, there exists a state of insecurity and terrorism among the people which makes it impossible in the ordinary way to conduct preliminary investigations before justices of the peace and other judicial officers:

In the interest of the public safety, it is hereby ordered that the writ of *habeas corpus* is from this date suspended in the Provinces of Cavite and Batangas.

LUKE E. WRIGHT,
Civil Governor.

20 "C."

(Translation.)

BATANGAS, *Aug.* 4, 1905.

Asst. Atty. Gen. Harvey, Manila.

Referring to your telegram to Senior Inspector Thompson, this gentleman has brought before me Felix Barcelon who told me that he was not with Captain Thompson as a prisoner, since he was permitted to go about freely wherever he liked, that he had never asked or authorized any lawyer to represent him before the Supreme Court or any other court, and that he now lives in the house of said Captain Thompson, where he is satisfied to remain. I advise you of this at the request of Senior Inspector Thompson.

AGUILERA, *Governor.*

21 United States Signal Corps.

Telegram received at:— "CA."

"4 Bu S N 133 OB 8 AM

BATANGAS, *August* 7, 1905.

Harvey, Attorney General, Manila.

Retel this date, following would be true and correct allegation: That while it is true that Felix Barcelon was detained in April, 1905, by order Col. Baker, and is now under surveillance of Capt. Thompson, writ of *habeas corpus* in his behalf should not issue upon application of Fisher and Chon, because said Barcelon states that he does not consider himself in detention and that he is satisfied to remain in Capt. Thompson's house, that he never has authorized or requested any lawyer to represent him before supreme court or other tribunal in *habeas corpus* proceeding, and that if Cohn and Fisher or anyone else are representing themselves as his attorney, they are doing it without his knowledge or consent, and contrary to his wishes.

THOMPSON."

22 "CB."

United States Signal Corps.

Telegram received at:—

"5 Bu S S 110 OB 1019 AM Rush Rush

BATANGAS, *Aug.* 7, 1905.

Harvey, Fiscal General, Auxiliar, Manila.

Felix Barcelon made affidavit before me this morning which I mailed. Deponent requested Captain Thompson to permit him to remain in Thompson's house until after he could testify in Roxas case. Thompson granted this permission and from June 3 to date Barcelon has lived in Thompson's house not as a prisoner but as a

gratuitous lodger. Deponent does not request nor authorize, nor does he desire legal representation before any tribunal as he has no complaint to make. If Fisher and Cohn or any other lawyer or individual are before the Supreme Court in deponent's behalf it is without his knowledge or consent.

PASTOR, *Escribano.*"

23 "D."

LIPA, BATANGAS, *April* 15, 1905.

Declaration of Felix Barcelon.

I, Felix Barcelon, sixty-seven years of age, a native of the town of Nasugbu, Province of Batangas, Philippine Islands, do hereby freely, voluntarily, and truthfully declare as follows:

I have lived in Nasugbu continuously since my birth. I am a farmer on the hacienda of Don Pedro Roxas. I know Don Pedro Roxas, Sr., and Don Pedro Roxas, Jr., and also know Don Florencio Oliva. I have known Don Pedro Roxas, Sr. since my childhood, and have known his son, Don Pedro Roxas, Jr., since before the insurrection, when he was a boy. I have known Don Florencio Oliva since he came to Nasugbu. I don't know how many years Don Florencio Oliva has been in Nasugbu, but when he came there he was a young man and unmarried. I have never had any difficulties or troubles with Don Pedro Roxas or with Don Florencio Oliva, and I am friendly toward both of them. I have seen Julian Ramos, who I understand is the chief of a band of ladrones, and think I would know him if I should see him again. In one of the days of this month of April, 1905,—the date I do not remember—I went with Don Pedro Roxas, Jr., Don Florencio Oliva, Pedro Cañete, Pedro Salanguit, and Mariano Barcelon, for the purpose of inspecting the land in the hacienda at Prensa; Prensa is the place where there is a dam for storing water for irrigation. Then we went up to Bunducan, near the mountains, and on arrival there, Don Pedro Roxas, Jr. gave me P20.00, Conant, and told me to take it and give it to Julian Ramos. I asked where Julian Ramos
24 was, and Don Florencio Oliva then told me that he was in the sitio of Alas-as. Then I went to the sitio of Alas-as, accompanied by Pedro Cañete, Pedro Salanguit, and Mariano Barcelon, and we found Julian Ramos and I delivered to him the money sent by Don Pedro Roxas, and told Julian Ramos that Don Pedro Roxas had sent him the money, and Julian Ramos told me to give his thanks to Don Pedro Roxas. My three companions accompanied me because Don Florencio Oliva told them to do so. Don Florencio told me to accompany him and Don Pedro from the poblacion to the "prensa." I am a tenant of the hacienda and get water from the irrigation ditch for the purpose of irrigating my land; Pedro Cañete, Pedro Salanguit, and Mariano Barcelon are not tenants of the hacienda, but are employees on the hacienda, who are employed as inspectors and guards, and as messengers. That day we left Nasugbu very early in the morning and went to the "prensa;" then

we went to Bunducan. The sitio of Alas-as is very near to Bunducan; after I delivered the money to Julian Ramos we returned to Bunducan, where Don Pedro Roxas and Don Florencio Oliva were waiting, and then we returned to Nasugbu that same morning in time for breakfast. We all went on horseback to Prensa and Bunducan, and my three companions and I also went on horseback from Bunducan to the place where we found Julian Ramos. Don Florencio Oliva was riding a dark mare—an American mare; the rest of us rode on Filipino horses. The horse ridden by Don Pedro Roxas was an iron grey Filipino horse. When we arrived at the place where we found Julian Ramos, all four of us dismounted and Mariano Barcelon held the bridle of my horse and the others were tied and Pedro Cañete and Pedro Salanguit and I went to Julian Ramos and I delivered the money to Ramos and the two Pedros saw me deliver it.

The foregoing declaration is the truth, the whole truth,
25 and nothing but the truth, and I have not been maltreated, coerced, or abused in any manner by any body in order to compel me to make this declaration.

——.

Witnesses:

——.

——.

"F."

26 *Investigation of Witnesses in the Roxas Case.*

LIPA, BATANGAS, *May* 8, 1905.

Declaration of Felix Barcelon.

Investigation by Mr. HARVEY:

Q. Your name is Felix Barcelon?
A. Yes, sir.
Q. How old are you?
A. Sixty-seven.
Q. Where were you born?
A. In Nasugbu.
Q. Have you lived there all your life?
A. Yes, sir.
Q. Are you a tenant on the Roxas hacienda in Nasugbu?
A. Yes, sir.
Q. Who is the manager or encargado of the Roxas Hacienda in Nasugbu?
A. Florencio Oliva.
Q. Do you know Don Pedro A. Roxas?
A. Yes, sir; I knew the father and the son.
Q. Do you remember having made a declaration here in Lipa some three or four weeks ago?
A. Yes, sir.

Q. Then afterwards you testified in the Court at Batangas, did you not?

A. Yes, sir; after I had left here.

Q. In the declaration that you made before the Court, you stated that the declaration you had made a few days before that in Lipa was not true. Please state whether you feel at liberty and perfectly free at the present time to tell the truth, the whole truth, and nothing but the truth, about the matter mentioned in your declaration.

27 A. Yes, sir; the reason why I told the story in the Court in Batangas is that there was some person who came to me while I was in the cuartel at Batangas and told me to tell the Court that the statement that I had made in Lipa was false. I do not know who the person was, as it was at night.

Q. What did that person say to you in the cuartel in Batangas?

A. He told me to tell the court that that statement that I made in Lipa was a lie and to tell them that I had been beaten by Lieut. Ramos in order to make me make that statement.

Q. Did that person say anything about what would happen if you did not deny that statement before the Court?

A. No, sir; he just told me to deny that statement.

Q. Do you know about what time of the night it was that this person came and said that to you?

A. It was after eight o'clock the night before I made my declaration in the Court at Batangas.

Q. Had you already gone to sleep before this man came and told you that?

A. I had gone upstairs to go to sleep but had not yet gone to sleep.

Q. Pedro Ruffy went to Batangas with you and staid with you until the time you testified before the Court, did he not?

A. Yes, sir.

Q. Where was Pedro Ruffy when this man came to you and told you that?

A. He was upstairs.

Q. Had he gone to bed?

A. Yes, sir.

Q. Do you know whether he was asleep of not?

A. When I went back upstairs he was awake.

28 Q. Do you mean when you went upstairs to go to sleep?

A. Yes, sir.

Q. Did you go upstairs to go to sleep before the man came and told you what you have said?

A. Yes, sir, and when I went to the rear to make water was when I saw the man who told me to deny the statement that I had made in Lipa.

Q. Were you at the rear when the man told you to deny your statement?

A. I was coming from the rear.

Q. Did you go to the rear upstairs or downstairs?

A. Downstairs, alongside the wall outside the house.

Q. Back of the house?
A. Yes, sir.
Q. Did you go upstairs to go to bed and then afterwards go down stairs to go to the rear?
A. Yes, sir; I went upstairs, then I came down stairs, went to the rear and went back upstairs again.
Q. Did anybody accompany you when you went down stairs to go to the rear?
A. No, sir.
Q. And you say it was when you were returning from the rear that you met the person who told you to deny your statement when you went before the Court? Is that the way it was?
A. Yes, sir.
Q. Then there was nobody with you when this person approached you?
A. No, sir.
Q. Pedro Ruffy was upstairs and had already gone to bed?
A. Yes, sir.
Q. And you say that when you got back upstairs after
29 going to the rear you think that Pedro Ruffy was asleep?
A. Yes, sir; and I also lay down.
Q. Who accompanied you and Pedro Ruffy to Batangas and who stayed with you at the cuartel or Constabulary headquarters?
A. Arciga.
Q. Where was Arciga when you went down stairs to the rear that night?
A. He and Captain Pedro were upstairs lying down.
Q. Why did you go before the Court next day and tell the Court that Lieut. Ramos had beaten you and compelled you to conform to a statement that had been made by somebody else?
A. That night when that man came to me he told me that when I went before the Court to say that Lieut. Ramos had beaten me and compelled me to conform to the statements that were made by the other witnesses, and that I should deny the statement that I had made in Lipa.
Q. Why did you do what that man told you to do,—that is,—why did you tell the Court that Lieut. Ramos had beaten you and that what you had stated in your declaration was not true?
A. Because that man told me to deny everything and to tell the Court that Lieut. Ramos had beaten me.
Q. Were you afraid for any reason not to do what that man told you to do?
A. Yes, sir; I was afraid of him, because he told me he would kill me if I did not tell the Judge what he said.
Q. The day before you began this declaration you talked with Mr. Nelson, my interpreter, did you not?
A. Yes, sir.
Q. Has Mr. Nelson threatened you or abused you in any way while he was talking to you?
A. Ever since I left Lemery (Taal) I have not been treated
30 badly at all, except that I have been kept incomunicado.

Q. Has Mr. Nelson treated you kindly or unkindly during the time that he was talking with you after you came to Lemery?

A. He has always treated me kindly and has never threatened me. He told me to tell the whole truth here; that is the only thing.

Q. Do you feel perfectly willing to tell the truth, the whole truth, and nothing but the truth now in answer to the questions that may be asked you?

A. Yes, sir.

Q. Do you remember the day of the week that you went on board the Coast Guard boat in Nasugbu?

A. I am not sure but I think it was Wednesday.

Q. Who asked you to go aboard the Cost Guard boat?

A. My nephew Juan Barcelon, lieutenant of police of Nasugbu.

Q. Who went with you on the banca when you went out to go on board the Coast Guard boat?

A. Teniente Juan and Mariano Barcelon and the oarsmen.

Q. When you arrived on board the Coast Guard boat what was done with you or what did you do?

A. They took a statement from me.

Q. Who took that statement?

A. Lieutenant Ramos.

Q. When you first went on board the boat did Lieutenant Ramos talk with you and Mariano Barcelon?

A. Yes, sir.

Q. Who else was present?

A. Mariano Barcelon, Lieutenant Ramos and myself.

Q. What did Lieutenant Ramos say to you?

31 A. He asked me if it was true that I had taken twenty pesos to Julian Ramos which was given to me by Don Pedro Roxas, and I told him "Yes" and I told him that Captain Florencio had told me to take the money to Alas-as and that the four of us started to the place called Alas-as. When we arrived there we met some men and we tied our horses and I asked for Julian Ramos. The men showed me a man who wore a cap and I walked up to him, gave him the money, told him who had sent it and what I was told to tell him. He told me to thank Don Pedro and Don Florencio very much and I bade him good-by and returned and met Don Pedro and Don Florencio at Bunducan.

Q. When Lieutenant Ramos asked you about that matter did you tell him what you have stated in this declaration?

A. Yes, sir.

Q. Who was present when you told him those things?

A. Myself and Lieutenant Ramos were in the room and Mariano Barcelon was right outside the door.

Q. How did Lieutenant Ramos treat you while he was talking with you and taking your declaration?

A. Very well.

Q. Did Lieutenant Ramos abuse you in any way in order to compel you to tell him what you knew about that matter?

A. No, sir.

Q. Did anybody on board the boat mistreat you in any way in order to get you to make that declaration?

A. No, sir.

Q. Do you feel willing this morning to state the truth, the whole truth and nothing but the truth about that trip when Don Pedro gave you twenty pesos to take to Julian Ramos?

A. Yes, sir.

Q. How many times, if you remember, has Don Pedro A.
32 Roxas been to the Nasugbu Hacienda since last November?

A. Three times.

Q. Do you know what Don Pedro did in Nasugbu the different times that he came there?

A. The first time he came he came from Manila and the boat stopped in Nasugbu and Don Pedro came and got me and took me with him to Burias. When we returned to Nasugbu we unloaded the carabaos and Don Pedro came ashore to see that the carabaos were put ashore safely and then he returned to Manila. The third time he came to Nasugbu to give the carabaos to the tenants and this was the fourth time he came, when he was arrested.

Q. Who asked you to go out with Don Pedro Roxas and Don Florencio Oliva when they went to visit the Prensa this last time that Don Pedro was in Nasugbu?

A. Nobody asked me, but when I heard that Don Pedro was at the Hacienda I voluntarily went there to see him.

Q. Did you go up to the hacienda to seen Don Pedro the day before you went with him out to the prensa?

A. Yes; the day that Don Pedro arrived at the hacienda, I think it was on a Friday, about noon time; I went to see him and he told me to come back about three o'clock in the afternoon, that he wanted to see the tubigan, and after he had visited the tubigan, he told me to come back the next day, that he wanted to visit the prensa.

Q. Did you visit the prensa?

A. Yes, sir.

Q. Who went to the prensa?

A. Captain Florencio Oliva, Don Pedro Roxas, myself, Pedro Cañete, Mariano Barcelon and Pedro Salanguit.

Q. Did you go on foot or horseback, or how did you go?

A. On horseback.

33 Q. Can you describe the horses ridden by the different men mentioned?

A. Yes, sir.

Q. Please describe them?

A. Captain Florencio rode a black American mare; Don Pedro rode a gray native mare; the horse I rode was a gray Filipino mare and the horses that the other three men rode were bays.

Q. Do you know whether they were mares or stallions?

A. I do not know whether they were all mares or mares and stallions.

Q. Do you know whether the animal ridden by Mariano Barcelon was a horse or a mare?

A. I think it was a mare.

Q. About what time did you and the others leave the "casa hacienda" to go out to visit the prensa?
A. It was daylight but the sun had not come up.
Q. Where did this party go first after leaving the casa hacienda?
A. To the prensa.
Q. What was done at the prensa?
A. They inspected it.
Q. When they finished inspecting the prensa where did the party go?
A. We went to Bunducan.
Q. What did you do at Bunducan?
A. We did not do much of anything with the exception of giving me the money.
Q. Who gave you the money?
A. Don Pedro Roxas.
Q. Did he tell you what to do with it?
A. Captain Florencio told me to take the money to Alas-as and give it to Ramos.
34 Q. What Ramos?
A. I asked him what Ramos and he said "Ramos the insurrecto."
Q. What is this place called Alas-as; describe it?
A. It is a level piece of land up in the mountains and on one side there is a ridge of hills and on the other side there is also a ridge of hills and there is a gulch leading around between the two ridges of hills into the place called Alas-as, which is the level piece of land in the mountains.
Q. After Don Pedro Roxas gave you the twenty pesos did you go to Alas-as as directed by Don Florencio?
A. Yes, sir; we went there and took the money.
Q. Who was with you?
A. Pedro Cañete, Pedro Salanguit, Mariano Barcelon.
Q. Do you know why Pedro Cañete, Pedro Salanguit and Mariano Barcelon went with you?
A. Yes, sir; Captain Florencio told them to go.
Q. Did you find any people up in the mountain when you went to Alas-as?
A. Yes, sir; we found some people at Alas-as?
Q. How did you first know that you had found these people?
A. We met a man who asked who we were and where we were going; I told him who we were and told him we had brought money from Don Pedro and Captain Florencio and I asked him for Ramos.
Q. Was the man that you met armed or not?
A. Yes, sir.
Q. What kind of arms did he have?
A. I think it was a Remington gun.
Q. After you told him who you were and what you wanted what did he say and do?
A. I asked him where Julian Ramos was and he showed me a man with a cap and told me that was Julian Ramos and I went to him and gave him the money.
35 Q. What did you say to Julian Ramos when you gave him the money?

A. I told him that they had sent the money and he asked me who had sent the money. I told him Don Pedro and Captain Florencio. He told me to thank them very much and I bade him good-by and we returned to Bunducan where we met Captain Florencio and Don Pedro.

Q. Did it take you a very long time to go from Bunducan up to Alas-as and back to Bunducan?

A. It did not take us very long because Alas-as is very close to Bunducan and as we were on horseback we went very quickly.

Q. When did you return to the "casa hacienda?"

A. That same morning.

Q. Do you remember what day of the week it was that you went out to Alas-as?

A. Saturday morning; it was the second day Don Pedro was there.

Q. Do you know when Don Florencio Oliva was taken aboard the Coast Guard boat?

A. No, sir.

Q. After you left Nasugbu with your companions on the Coast Guard boat where did you go?

A. To Batangas; the boat stopped at Taal and then we went to Batangas.

Q. When you arrived in Batangas what did you do?

A. When we came ashore we went right on to Lipa.

Q. After you arrived in Lipa did you make a declaration?

A. Yes, sir.

Q. Do you recognize anyone here today who was present when you made that declaration?

A. Yes, sir. (Pointing to Mr. Blanchard, Mr. Harvey, Captain Baker, Mr. Poblete and Mr. Noon.) I do not remember their names and in fact I do not know them.

36 Q. In that declaration did you testify to the truth, the whole truth and nothing but the truth, or did you make a false declaration?

A. Everything that I said there was the truth, but that man came to me in Batangas and told me to tell that it was a lie.

Q. Are you willing to go before the Court and explain why you testified in Court at Batangas that you had been beaten by Lieutenant Ramos; and that your declaration made in Lipa was not the truth?

Q. Yes, sir.

Q. Do you know the name of the man who came to you at the cuartel at Batangas and threatened to kill you if you did not deny before the Court the declaration you had made against Don Pedro Roxas?

A. No, sir; I do not know his name.

Q. Did you know his voice, or could you tell whether he was a man from Nasugbu?

A. No, sir.

Q. Was he a Spaniard, a Filipino or an American?

A. He was a Filipino.

Q. Did he speak in Spanish or Tagalog?

A. In Tagalog.

Q. Was he a short man or a tall man?
A. A little shorter than I am.
Q. Was he a thin man or a fat man?
A. A fat man.
Q. Was he dressed in white or in dark clothing?
A. In white.
Q. Do you know whether he wore a dark belt around his waist or not?
37 A. I did not see.
Q. Are you willing to make oath to this declaration before the Assistant Attorney General as the truth, the whole truth and nothing but the truth, so help you God?
A. Yes, sir.
Q. Can you read and write in the Tagalog language?
A. I can read a little in the Tagalog language and I can sign my name; that is about all.
Q. Would you like to have your declaration read over to you by Mr. Poblete, in the presence of Mr. Nelson and others who understand Tagalog, before you sign it?
A. Yes, sir.
(Signed) FELIX BARCELON.

In the presence of:
JOHN NELSON.
GEORGE R. HARVEY.
R. D. BLANCHARD.
W. P. BAKER.
JOHN N. NOON.
JOSÉ POBLETE.

Subscribed and sworn to before me this 10th day of May, 1905.
(Signed) GEO. R. HARVEY,
Assistant Attorney General of the Philippine Islands.

Filed in the Clerk's Office of the Supreme Court of the Philippine Islands this 5th day of August, 1905.
(Stamp) J. E. BLANCO, *Clerk,*
(S'g'd) By H. D. McGEORGE, *Deputy.*

38 UNITED STATES OF AMERICA, *Philippine Islands.*

In the Supreme Court of the Philippine Islands.

In the Matter of the Petition for the Issuance of the Writ of *Habeas Corpus* in Favor of FELIX BARCELON.

Now come Fred C. Fisher and Charles C. Cohn, petitioners in the above entitled action, and respectfully state to the Honorable Supreme Court:
That subsequent to the date of the filing of the return of the re-

spondents to the order of this Honorable Court wherein, it is alleged that the petitioners lack the capacity to represent the prisoner Felix Barcelon.

The said petitioners have received of said Barcelon an express authorization to represent him in this matter, which authorization is drawn in the following terms:—

"Batangas, P. I., 27 Agosto de 1905. Sa pamagitan nito'y aking pinatutuhanan na minamarapat ng calooban co ang boong pag u usig ng mga Abogados Senores Cohn at Fisher upang matamo ang tunay na libertad co dito sa aking pag ca bilango. (firmado) Felix Barcelon."

Whereof the translation to English is as follows:—

"Batangas, P. I., August 27, 1905. I hereby cause it to appear that I voluntarily approve all of the acts practiced by the attorneys Messrs. Cohn and Fisher to obtain my true liberty from this imprisonment in which I find myself. (Signed) Felix Barcelon."

That the original of said authorization the undersigned preserve in their own possession on account of its great importance and for fear that the same be lost, but the undersigned are prepared to produce the same to this Court if so required.

Manila, P. I., Sept. 1st, 1905.

(Sgd.) F. C. FISHER.

39 (Sgd.) CHARLES C. COHN.

Received a copy this 1st day of Sept., 1905.

(Sgd.) GEO. R. HARVEY,
Assistant Attorney General.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands, this 1st day of September, 1905, 11.50 a. m.

J. E. BLANCO, *Clerk,*
By H. D. McGEORGE, *Deputy.*

40 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 2808.

FELIX BARCELON
vs.
DAVID J. BAKER, JR., Colonel of the Philippines Constabulary, and JOHN DOE THOMPSON, Captain of the Philippines Constabulary.

JOHNSON, *J.*

This was an application by Fred C. Fisher and Charles C. Cohn, attorneys-at-law, on behalf of the plaintiff, Felix Barcelon, for the writ of *habeas corpus*. The said application alleges, among other things, the following:—

1. That the said applicant is detained and restrained of his liberty at the town of Batangas, in the Province of Batangas, Philippine Islands;

2. That the person who detained and restrained the said applicant of his liberty is John Doe Thompson, Captain of the Philippines Constabulary, acting under and in pursuance of the orders of David J. Baker, Jr., Colonel of the Philippines Constabulary;

3. That the detention and restraint of the said applicant is wholly without legal authority therefor. (Here follows a statement of the alleged causes of arrest and detention of the said applicant by the said defendants);

4. That the detention and restraint of the said applicant is not under or by virtue of any process issued by any court or
41 magistrate, nor by virtue of any judgment or order of any court of record, nor of any court nor of any magistrate whatsoever.

5. That there has not existed during any of the times in this petition mentioned, and there does not now exist, in said Province of Batangas, Philippine Islands, nor in any part thereof, rebellion, insurrection or invasion, nor any of them, in any form or degree; and that all the courts of law, organized and provided by law for the Province of Batangas, have been at all of the times hereinbefore mentioned, in the full and complete exercise of their functions, without interruption of any nature or kind.

Wherefore your petitioners pray that a writ of *habeas corpus* be issued, requiring the said John Doe Thompson, Captain of the Philippines Constabulary, and David J. Baker, Jr., Colonel of the Philippines Constabulary, to bring before this Honorable court the person of the said Felix Barcelon, and that after a full hearing in accordance with law, the said Felix Barcelon be liberated and released from all restraint and detention, and that respondents be enjoined from any and all interference with the personal liberty of said Felix Barcelon.

(Signed) FRED. C. FISHER.
CHARLES C. COHN.

(The foregoing facts were duly sworn to by the said applicants.)

The court after considering the foregoing petition, made an order on the 3rd day of August, 1905, directing the said David J. Baker, Jr. and the said John Doe Thompson to appear before this court on the 4th day of August, 1905, at nine o'clock A. M., to show cause why the writ of *habeas corpus* should not be granted in accordance with the prayer of said petition.

42 At nine o'clock A. M. on the 4th day of August, the respondents, by the Attorney General of the Philippine Islands, through George R. Harvey, representing the latter, filed their answer to the foregoing petition. By the reason of the fact that the said answer failed to disclose whether or not the said Felix Barcelon was actually detained and deprived of his liberty by the said respondents, the court directed that said answer be amended, stating with-

out equivocation whether or not Felix Barcelon was actually detained by the said respondents, which amended answer, among other things, contained the following allegation:

First. That the writ of *habeas corpus* should not issue on the application filed herein, because the court is without jurisdiction or authority to grant the privileges of the writ of *habeas corpus* in the Province of Batangas, for the reason that on January 31st, 1905, the Governor General, pursuant to a resolution and request of the Philippine Commission, suspended said writ in the Provinces of Cavite and Batangas, in accordance with the provisions of section 5 of the Act of Congress known as "The Philippine Bill," the Philippine Commission and the Governor General basing such suspension upon the fact that certain organized bands of ladrones in said provinces were in open insurrection against the constituted authorities; and the said bands, or parts of them, and some of their leaders, were still in open resistance to the constituted authorities. The said resolution of the Commission and the said proclamation of the Governor General are in the words following:

(*Resolution of the Philippine Commission, dated January* 31*st,* 1905.)

"Whereas, certain organized bands of ladrones exist in the provinces of Cavite and Batangas, who are levying forced contributions upon the people, who frequently require them, under compulsion, to join their bands, and who kill or maim in the most barbarous
43 manner those who fail to respond to their unlawful demands, and are therefore terrifying the law-abiding and inoffensive people of those provinces; and

"Whereas, these bands have in several instances attacked police and constabulary detachments, and are in open insurrection against the constituted authorities; and

"Whereas, it is believed that these bands have numerous agents and confederates living within the municipalities of the said provinces; and

"Whereas, because of the foregoing conditions there exists a state of insecurity and terrorism among the people which makes it impossible in the ordinary way to conduct preliminary investigations before justices of the peace and other judicial officers;

"Now, therefore, be it resolved, That the public safety requiring it, the Governor General is hereby authorized and requested to suspend the writ of *habeas corpus* in the provinces of Cavite and Batangas."

(*Proclamation of the Governor General, Dated January* 31*st,* 1905.)

"Whereas, certain organized bands of ladrones exist in the provinces of Cavite and Batangas, who are levying forced contributions upon the people, who frequently require them, under compulsion, to join their bands, and who kill or maim in the most barbarous manner those who fail to respond to their unlawful demands, and are there-

fore terrifying the law-abiding and inoffensive people of those provinces; and

"Whereas, these bands have in several instances attacked police and constabulary detachments, and are in open insurrection against the constituted authorities, and it is believed that the said bands have numerous agents and confederates living within the municipalities of the said provinces; and

"Whereas, because of the foregoing conditions there exists a state of insecurity and terrorism among the people which makes it impossible in the ordinary way to conduct preliminary investigations before the justices of the peace and other judicial officers;

"In the interest of public safety, it is hereby ordered that the writ of *habeas corpus* is from this date suspended in the provinces of Cavite and Batangas."

(Signed) LUKE E. WRIGHT,
Governor General.

Second. Not waiving the question of jurisdiction, the respondents state that it is true that Felix Barcelon was detained in the month of April, 1905, by order of Colonel David J. Baker, Jr., Assistant Chief of the Philippine Constabulary, and that the said Barcelon is now detained under the surveillance of Captain W. E. Thompson, Senior Inspector of Constabulary, in the Provinces of Batangas.

44 By this answer, the respondents admit that they are detaining the body of the said Felix Barcelon, and deny the right of this court to inquire into the reasons therefor by virtue of the said resolution of the United States Philippine Commission and the proclamation of the Governor General, issued by authority of the same, suspending the privileges of the writ of *habeas corpus* in the said provinces of Cavite and Batangas.

Thus the question is squarely presented whether or not the judicial department of the Government may investigate the facts upon the legislative and executive branches of the Government acted in providing for the suspension and in actually suspending the privileges of the writ of *habeas corpus* in said provinces. Has the Governor General, with the consent of the Commission, the right to suspend the privileges of the writ of *habeas corpus?* If so, did the Governor General suspend the writ of *habeas corpus* in the provinces of Cavite and Batangas in accordance with such authority?

A paragraph of Section 5 of the Act of Congress of July 1st, 1902, provides:

"That the privileges of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor General, with the approval of the Philippine Commission, whenever during such period the necessity for such suspension shall exist."

This provision of the Act of Congress is the only provision giving the Governor General and the Philippine Commission authority to suspend the privileges of the writ of *habeas corpus.* No question has been raised with reference to the authority of Congress to confer this

authority upon the President or the Governor General of these Islands, with the approval of the Philippine Commission.

This provision of the Act of Congress makes two conditions necessary in order that the President or the Governor General,
45 with the approval of the Philippine Commission, may suspend the privileges of the writ of *habeas corpus*. They are as follows:

First. When there exists rebellion, insurrection or invasion; and

Second. When public safety may require it.

In other words, in order that the privileges of the writ of *habeas corpus* may be suspended, there must exist rebellion, insurrection or invasion, and the public safety must require it. This fact is admitted, but the question is, who shall determine whether there exists a state of rebellion, insurrection or invasion, and that by reason thereof the public safety requires the suspension of the privilege of the writ of *habeas corpus*.

It has been argued and admitted that the Governor General, with the approval of the Philippine Commission, has a discretion, when insurrection, rebellion or invasion actually exist, to decide whether the public safety requires the suspension of the privileges of the writ of *habeas corpus;* but the fact whether insurection, rebellion or invasion does actually exist is an open question, which the judicial department of the Government may inquire into and that the conclusions of the legislative and executive departments (The Philippine Commission and the Governor General) of the Government are not conclusive upon that question.

In other words, it is contended that the judicial department of the Government may consider an application for the writ of *habeas corpus,* even though the privileges of the same have been suspended in the manner provided by law, for the purposes of taking proof upon the question whether there actually exists a state of insurrection, rebellion or invasion.

46 The applicants here admit that if a state or rebellion, insurrection or invasion, exists, and the public safety is in danger, then the President or Governor General, with the approval of the Philippine Commission, may suspend the privileges of the writ of *habeas corpus*.

Inasmuch as the President or Governor General, with the approval of the Philippine Commission, can suspend the privileges of the writ of *habeas corpus* only under the conditions mentioned in the said statute, it becomes their duty to make an investigation of the existing conditions in the archipelago, or any part thereof, to ascertain whether there actually exists a state of rebellion, insurrection or invasion, and that the public safety requires the suspension of the privileges of the writ of *habeas corpus*. When this investigation is concluded, the President or the Governor General, with the consent of the Philippine Commission, declares that there exists these conditions, and that the public safety requires the suspension of the privileges of the writ of *habeas corpus,* can the judicial department of the Government investigate the same facts and declare that no such conditions exist.

The Act of Congress above quoted, wisely provides for the investigation, by two departments of the Government, the legislative and executive, of the existing conditions, and joint action by the two before the privileges of the writ of *habeas corpus* can be suspended in these islands.

If the investigation and findings of the President, or the Governor General, with the Philippine Commission, is not conclusive and final, as against the judicial department of the Government, then every officer whose duty it is to maintain order and protect the lives and property of the people, may refuse to act, and apply to the judicial department of the Government for another investigation and
47 conclusion concerning the same conditions, to the end that they may be protected against civil actions, resulting from illegal acts.

Owing to conditions at times, a state of insurrection, rebellion or invasion may arise suddenly and may jeopardize the very existence of the state. Suppose, for example, that one of the thickly populated governments situated near this archipelago, anxious to extend its power and territory, should suddenly decide to invade these Islands, and should, without warning, appear in one of the remote harbors with a powerful fleet and at once begin to land troops. The Governor or Military Commander of the particular district or province notifies the Governor General by telegraph of this landing of troops and that the people of the district are in collusion with such invasion. Might not the Governor General and the Commission accept this telegram as sufficient evidence and proof of the facts communicated and at once take steps, even to the extent of suspending the privileges of the writ of *habeas corpus,* as might appear to them to be necessary to repel such invasion? It seems that all men interested in the maintenance and stability of the Government would answer this question in the affirmative.

But suppose some one, who has been arrested in the district upon the ground that his detention would assist in restoring order and in repelling the invasion, applies for the writ of *habeas corpus,* alleging that no invasion actually exists; may the judicial department of the Government call the officers actually engaged in the field before it and away from their posts of duty for the purpose of explaining and furnishing proof to it concerning the existence or non existence of the facts proclaimed to exist by the legislative and executive branches of the state? If so, then the courts may effectually tie the hands of the executive, whose special duty it is to enforce the laws and
48 maintain order, until the invaders have actually accomplished their purposes. The interpretation contended for here by the applicants, so pregnant with detrimental results could not have been intended by the Congress of the United States when it enacted the law.

It is the duty of the legislative branch of the government to make such laws and regulations as will effectually conserve peace and good order and protect the lives and property of the citizens of the state. It is the duty of the Governor to take such steps as he deemwise and necessary for the purpose of enforcing such laws. Every

delay and hindrance and obstacle which prevents a strict enforcement of laws under the conditions mentioned, necessarily tends to jeopardize public interests and the safety of the whole people. If the judicial department of the Government, or any officer in the government has a right to contest the orders of the President or of the Governor-General under the conditions above supposed, before complying with such orders, then the hands of the President or the Governor-General may be tied until the very object of the rebels or insurrectos or invaders has been accomplished. But it is urged that the President or the Governor-General, with the Philippine Commission, might be mistaken as to the actual conditions; that the legislative department, the Philippine Commission, might by resolution declare after investigation that a state of rebellion, insurrection or invasion exists, and that the public safety requires the suspension of the privileges of the writ of *habeas corpus,* when, as a matter of fact, no such conditions actually existed; that the President or the Governor-General, acting upon the authority of the Philippine Commission, might by proclamation suspend the privileges of the writ of *habeas corpus* without there actually existing the conditions mentioned in the Act of Congress. In other words, the applicants allege in their argument in support of their application for the writ of *habeas corpus,* that the legislative and executive branches of the government might reach a wrong conclusion
49 from their investigations of the actual conditions, or might, through a desire to oppress and harrass the people, declare that a state of rebellion, invasion or insurrection existed and that public safety required the suspension of the privileges of the writ of *habeas corpus,* when actually and in fact no such conditions did exist. We can not assume that the legislative and executive branches will act or take any action based upon such motives.

Moreover, it can not be assumed that the legislative and executive branches of the government, with all the machinery which those branches have at their command for examining into the conditions in any part of the archipelago, will fail to obtain all existing information concerning actual conditions. It is the duty of the executive branch of the Government to constantly inform the legislative branch of the Government of the condition of the Union as to the prevalence of peace or disorder. The executive branch of the Government, through its numerous branches of the Civil and military, ramifies every portion of the archipelago, and is enabled thereby to obtain information from every quarter and corner of the state. Can the judicial department of the Government, with its very limited machinery for the purpose of investigating general conditions, be any more sure of ascertaining the true conditions throughout the archipelago, or in any particular district, then the other branches of the Government? We think not.

We are of the opinion that the only question- which this department of the Government can go into with reference to the particular questions submitted here are as follows:

1. Admitting the fact that Congress had authority to confer upon the President or the Governor General and the Philippine Commis-

sion authority to suspend the privileges of the writ of *habeas corpus*, was such authority actually conferred? and

2. Did the Governor General and the Philippine Commission acting under such authority, act in conformance with such authority?

If we find that Congress did confer such authority and that the Governor General and the Philippine Commission acted in conformance with such authority, then this branch of the Government is excluded from an investigation of the facts upon which the Governor General and the Philippine Commission acted, and upon which they based the resolution of January 31st, 1905, and the proclamation of the Governor General of the same date. Under the form of Government established in the Philippine Islands, one department of the Government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department.

Upon and examination of the law we conclude:

First. That the paragraph of section 5 above quoted of the Act of Congress of July 1st, 1902, confers upon the Governor General and the Philippine Commission the right to suspend the privileges of the writ of *habeas corpus* under the conditions therein named.

Second. That the Philippine Commission, acting within the discretion which such Act of Congress confers upon them, did authorize the Governor General, by its resolution of January 31st, 1905, to suspend the privileges of the writ of *habeas corpus* in the manner and form indicated in the said proclamation of the Governor General of January 31st, 1905.

That said resolution of the Philippine Commission has the effect of law for the purposes for which it was enacted. The judicial department of the Government may examine every law enacted by the legislative branch of the Government for the purpose of ascertaining:

(*a.*) Whether or not such law came within the subject matter upon which the legislative branch of the Government might legislate; and

(*b.*) Whether the provisions of such law were in harmony with the authority given by the legislature.

If the judicial branch of the Government finds,

(*a.*) That the legislative branch of the Government had authority to legislate upon the particalar subject, and

(*b.*) That the particular law contained no provisions in excess of such department, then that investigation or that conclusion, conclusively terminates the investigation by this department of the Government.

We base our conclusions that this application should be dismissed upon the following facts:

First. Congress had authority to provide that the President or the Governor General, with the approval of the Philippine Commission, might suspend the privileges of the writ of *habeas corpus* in cases of rebellion, insurrection or invasion, when the public safety might require it.

Second. That the Philippine Commission, acting within this

power, had authority to pass the resolution above quoted, of January 31st, 1905, after an investigation of the condition.

Third. That by virtue of said Act of Congress, together with said resolution of the Philippine Commission, the Governor General had authority to issue the said proclamation of January 31st, 1905, suspending the privileges of the writ of *habeas corpus*.

Fourth. That the conclusion set forth in the said resolution and the said proclamation, as to the fact that there existed in the provinces of Cavite and Batangas open insurrection against the constituted authorities, was a conclusion entirely within the discretion
52 of the legislative and executive branches of the Government, after an investigation of the facts.

Fifth. That one branch of the United States Government in the Philippine Islands has no right to interfere or inquire into, for the purpose of nullifying the same, the discretionary acts of another independent department of the Government.

Sixth. Whenever a statute gives to a person or a department of the Government discretionary power, to be exercised by him or it, upon his or its opinion of certain facts, such statute constitutes him or it, the sole and exclusive judge of the existence of those facts.

Seventh. The Act of Congress gave to the President, or the Governor General, with the Approval of the Philippine Commission, the sole power to decide whether a state of rebellion, insurrection or invasion existed in the Philippine Archipelago, and whether or not the public safety required the suspension of the privileges of the writ of *habeas corpus*.

Eighth. This power having been given and exercised in the manner above indicated, we hold that such authority is exclusively vested in the legislative and executive branches of the Government and their decision is final and conclusive upon this department of the Government and upon all persons.

Happily we are not without high authority to support the foregoing conclusions. This is not the first time this same question has been presented in one form or another to the judicial department of the Government of the United States, as well as to the Government of the various States of the Union.

The same general question presented here was presented to the Supreme Court of the United States in the case of Martin *v.* Mott, in January, 1827. An Act of Congress of 1795 provided:

"That whenever the United States shall be invaded or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state or states most con-
53 venient to the place of danger or scene of action, as he may judge necessary to repel such invasion, and to issue his order for that purpose to such officer or officers of the militia as he shall think proper."

In this case (Martin *v.* Mott) the question was presented to the court whether or not the President's action in calling out the militia was conclusive against the courts. The Supreme Court of the United States, in answering this question, said:

"The power thus confided by the Congress to the President is, doubtless, of a very high and delicate nature. A free people are naturally jealous of the exercise of military power; and the power to call the militia into actual service is certainly felt to be one of no ordinary magnitude. But it is not a power which can be executed without corresponding responsibility. It is, in its terms, a limited power, confined to *cases of actual invasion* or of *imminent danger of invasion*. If it be a limited power, the question arises, By whom is the exisency to be adjudged of and decided? Is the President the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question, upon which every officer to whom the orders of the President are addressed, may decide for himself, and equally open to be contested by every militiaman who shall refuse to obey the orders of the President? *We are all of the opinion that the authority to decide whether the exigency has arisen belongs exclusively to the Persident and his decision is conclusive upon all other persons.* We think that this construction necessarily results from the nature of the power itself and from the manifest object contemplated by the Act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of state and under circumstances which may be vital to the existence of the Union. * * * If a superior officer has a right to contest the orders of the President, upon his own doubts as to the exi-
54 gency having arisen, it must be equally the right of every inferior officer and soldier: * * * Such a course would be subversive of all discipline and exposed the best disposed officer to the chances of erroneous litigation. Besides, in many instances, the evidence upon which the President might decide that there is imminent danger of invasion might be of a nature not constituting strict technical proof, or the disclosure of the evidence might reveal important secrets of state, which the public interest and even safety might imperiously demand to be kept in concealment.

Whenever the statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts. And in the present case we are all of opinion that such is the true construction of the Act of 1795. It is no answer that such power may be abused, for there is no power which is not susceptible of abuse."

Martin *v.* Mott (12 Wheat., 19), (25 U. S. Rep.).
Vanderheyden *v.* Young (11 Johns.) (N. Y. 150).

Justice Joseph Story, for many years a member of the Supreme Court of the United States, in discussing the question who may suspend the privileges of the writ of *habeas corpus,* under the Constitution of the United States, said:

"It would seem, as the power is given to Congress to suspend the writ of *habeas corpus* in cases of rebellion, insurrection or invasion, that the right to *judge* whether the exigency has arisen must conclusively belong to that body."

Story on the Constitution (5th ed. section 1342).

Justice James Kent, for many years a justice of the Supreme Court of the State of New York, in discussing the same question, cites the case of Martin *v.* Mott, and says:

55 "In that case it was decided and settled by the Supreme Court of the United States, that it belonged exclusively to the President to judge when the exigency arises, in which he had authority, under the Constitution, to call forth the militia, and that his decision was conclusive upon all other persons."

Kent's Commentaries (14th ed. Vol. 1 bottom page 323).

John Randolph Tucker, for many years a professor of constitutional and international law in Washington and Lee University, in discussing this question said:

"By an act passed in 1795, Congress gave to the President power to call out the militia for certain purposes, and by subsequent acts in 1807, power was given to him to be exercised whenever he should deem it necessary, for the purposes stated in the constitution; and the Supreme Court (U. S.) has decided that this executive discretion in making the call (for state militia) could not be judicially questioned."

Tucker on the Constitution.

John Norton Pomeroy, an eminent law writer upon constitutional questions, said:

"In Martin *v.* Mott it was decided that under the authority given to the President by the statute of 1795, calling forth the militia under certain circumstances, the power is exclusively vested in him to determine whether those circumstances exist; *and when he has determined by issuing his call, no court can question his decision.*"

Pomeroy's Constitutional Law, (Section 476).

Mr. Henry Campbell Black, a well-known writer on the Constitution, says:

"By an early Act of Congress it was provided that in case of an insurrection in any state against the Government thereof,

56 it shall be lawful for the President of the United States, on application of the legislature of such state, or of the executive (when the legislature can not be convened) to call forth such a number of the militia of any other state or states as may be applied for, as he may judge sufficient to suppress such insurrection. By this act the power of deciding whether the exigency has arisen upon which the Government of the United States is bound to interfere is given to the President."

Black's Constitutional Law, page 102.

Judge Thomas M. Cooley, in discussing the right of the judicial department of the Government to interfere with the discretionary action of the other departments of the Government, in his work on constitutional law, said:

"Congress may confer upon the President the power to call them (the militia) forth, and this makes him the exclusive judge whether

the exigency has arisen for the exercise of the authority and renders one who refuses to obey the call liable to punishment under martial law." (Cooley's Principles of Constitutional Law, 88.)

But it may be argued by those who contend for the contrary doctrine, to wit: that the acts of the Governor General, with the approval of the Philippine Commission, are not conclusive upon the courts and that none of the foregoing citations are exactly in point, that none of these cases or authors treat of a case exactly like the one presented. We are fortunate, however, in being able to cite, in answer to that contention, the case of Henry William Boyley, where exactly the same question was presented to the Supreme Court of the State of Idaho, which the applicants present here and where the Courts held the doctrine of the cases applied. In the case of Boyle, he had been arrested after the privilege of the writ of *habeas corpus* had been suspended. He applied for a writ of *habeas*
57 *corpus* to the Supreme Court of Idaho, alleging, among other things, in his application:

First. That "no insurrection, riot or rebellion now exists in Shoshone county." And

Second. That "the Governor has no authority to proclaim martial law or suspend the writ of *habeas corpus.*"

In reply to this contention on the part of the applicant Boyle, the Court said:

"Counsel have argued ably and ingeniously upon the question as to whether the authority to suspend the writ of *habeas corpus* rests with the legislative and executive powers of the Government, but from our views of this case, that question cuts no figure. We are of the opinion that whenever, for the purpose of putting down insurrection or rebellion, the exigencies of the case demand it, with the successful accomplishment of this end in view, it is entirely competent for the executive or for the military officer in command, if there be such, either to suspend the writ or disregard it if issued. The statutes of this state (Idaho) make it the duty of the Governor, whenever such a state or condition exists as the proclamation of the Governor shows does exist in Shoshone county, to proclaim such locality in a state of insurrection and to call in the aid of the Military of the state or of the Federal Government to suppress such insurrection and reestablish permanently the ascendency of the Law. It would be an absurdity to say that the action of the executive, under such circumstances, may be negatived and set at naught by the judiciary, or that the action of the executive may be interferred with or imputed by the judiciary. If the courts are to be made a sanctuary, a seat of refuge whereunto malefactors may fall for protection from punishment justly due for the commission of crime, *they* will soon cease to be that palladium of the rights of the citizen so ably described by counsel."

58 "On application for a writ of *habeas corpus,* the truth of recitals of alleged facts in a proclamation issued by the Governor proclaiming a certain county to be in a state of insurrection and rebellion will not be inquired into or reviewed. The action of the Governor in declaring Shoshone county to be in a state of in-

surrection and rebellion, and his action in calling to his aid the military forces of the United States for the purpose of restoring good order and the supremacy of the law, has the effect to put in force, to a limited extent, martial law in said county. Such action is not in violation of the Constitution, but in harmony with it, being necessary for the preservation of government. In such case the Government may, like as individual acting in self-defense, take those steps necessary to preserve its existence. If hundreds of men can assemble themselves and destroy property and kill and injure citizens, thus defeating the ends of government, and the government is unable to take all lawful and necessary steps to restore law and maintain order, the state will then be impotent if not entirely destroyed, and anarchy placed in its stead."

"It having been demonstrated to the satisfaction of the Governor, after some six or seven years of experience that the execution of the laws in Shoshone county through the ordinary and established means and methods was rendered practically impossible, it became his duty to adopt the means prescribed by the statute for establishing in said county the supremacy of the law and insuring the punishment of those by whose unlawful and criminal acts such a condition of things has been brought about; and it is not the province of the courts to interfere, delay or place obstructions in the path of duty pre-cribed by law for the execution, but rather to render him all the aid and assistance in their power, in his efforts to bring about the consum-ation most devoutly prayed for by every good,
59 law-abiding citizen in the state."

In re Boyle, 45 L. R. A. (1899) 832.

The doctrine that whenever the Constitution or a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, such person is to be considered the sole and exclusive judge of the existence of those facts, has been recognized, not only by the Supreme Court of the United States, but by practically all of the Supreme Courts of the different states, and has never been disputed by any respe-table authority. The following cases are cited in support of this doctrine:

Martin *v.* Mott (1827) 12 Wheat. 19, (25 U. S. Rep.)
Luther *v.* Borden (1849) 7 How. 44, 77.
Wilkes *v.* Dinaman, (1849) 7 How. 130, 131.
Murray *v.* Hoboken, &c. Co. (1855) 18 How. 280.
U. S. *v.* Speed (1868) 8 Wall. 83.
Mullen *v.* U. S. (1890) 140 U. S. 245.
Nishimura Ekiu *v.* U. S. (1891) 142 U. S. 660.
Ex parte Field (1862) 5 Blatch. 77, 81 (Fed. Case No. 4761).
Allen *v.* Blunt, 3 Story 745. (Fed. Case No. 216.)
Gould *v.* Hammond, 1 McAll, 237, 239, (Fed. Case 5638).
U. S. *v.* Cotton, (1872) 27 Fed. Case pp. 325, 328.
U. S. *v.* Packages, (1862) 21 Fed. Case, pp. 288, 289.
U. S. *v.* Cemment, (1862) 27 Fed. Case p. 293.
U. S. *v.* Tropic Wind, 28 Fed. Case p. 221.
In re Day, 28 Fed. Case, p. 680.

Hammer *v.* Mason, 24 Ala., 485.
People *v.* Pacheco, (1865) 27 Cal. 223.
Porter *v.* Haight (1873) 45 Cal. 639.
Evansville & C. Ry. Co. *v.* Evansville, 15 Ind. , 421.
Koehler *v.* Hill, 60 Ia. 566.
People *v.* Wayne (1877) 39 Mich. 20.
State *v.* Town of Lime (1877) 23 Minn. 526.
60 People *v.* Parker 3 Nebraska, 432.
Lem Moon Sing *v.* U. S. (1896) 165 U. S. 559, 560.
Kneedler *v.* Lane (1863) 45 Penn. St. 292.
In re Legislative Adjournment (1893) 18 Rhode Island, 834; 22 L. R. A. 716.
Chapin *v.* Ferry (1891) 3 Washington 396; 28 Pac. Rep. 758; 15 L. R. A. 120.
Druecker *v.* Solomon, 21 Wis. 626; 94 Am. Dec. 574, 576.
People *v.* Bissell (1857) 19 Ill. 229, 232, 233.
Sutherland *v.* Governor, 29 Mich. 320, 330. (1874)
Ambler *v.* Auditor General (1878) 38 Mich. 746, 751.
State *v.* Warmoth (1870) 22 La. An. Rep. 1; 13 Am. Rep. 126.
Jonesboro & Co. *v.* Brown (1875) 8 Baxter (Tenn.) 490; 35 Am. Rep. 713.

In the case of the United States *v.* Packages (27 Fed. Case pp. 284, 288) above cited, the court, in discussing the authority of the judicial department of the Government to interfere with the discretionary powers of the executive and legislative, said:

"The doctrine involved has been fully discussed in several cases decided by this court during the last fifteen months, and was virtually settled long ago by the United States Supreme Court. The judiciary, under the Constitution, can not declare war or make peace. It is clothed with no such power, and can not be clothed with it. Whatever power is vested by the Constitution in one department of the Government can not be usurped by another. If one should wholly refuse to act, or should undertake to divest itself, or abdicate its legitimate functions, it would by no means follow that another department, expressly limited to specific duties, would thereby acquire ungranted powers. The abdication of executive functions by the executive, for instance, would not constitute the judicial
61 the executive department of the country; nor would a failure or refusal of the legislative to pass needed statutes constitute the executive the law-making power. Each department has its true boundaries prescribed by the Constitution, and it can not travel beyond them."

U. S. *v.* Ferrera (1851) 13 How. 40.
Little *v.* Bareme (1804) 2 Cranch. 170.

"The condition of peace, or war, public or civil, in a legal sense, must be determined by the political department, not the judicial. The latter is bound by the decision thus made. The Act of 1795 and the Act of July 13th, 1861, vests the President with the power to de-

termine when insurrection exists, and to what extent it exists. The United States Constitution vests Congress with the power 'to provide for calling forth the militia to execute the laws of the Union, to suppress insurrection, and repel invasion; to declare war * * * and make rules concerning captures on land — water.' In the execution of that power, Congress passed the act cited above."

"By the Act of 1795, the Supreme Court says: 'The power of deciding whether the exigency had arisen upon which the Government of the United States is bound to interfere, is given to the President.' * * * After the President has acted, is a Circuit Court of the United States authorized to inquire whether his decision was right? Could the court, while the parties were actually contending in arms for the possession of the government, call witnesses before it and inquire which party represented a majority of the people? * * * If the judicial power extends so far, the guaranty contained in the Constitution of the United States is a guaranty of anarchy, and not of order. Yet if this right does not reside in the courts when
62 the conflict is raging; if the judicial power is at that time bound to follow the decision of the political (department of the Government), it must be equally bound when the contest is over. At all events, it (the power to decide) is conferred upon him (the President) by the Constitution and laws of the United States, and must therefore be respected and enforced in its judicial tribunals."

Luther *v.* Borden (1849) 7 How. 43, 44.
Martin *v.* Mott (1827) 12 Wheat. 29-31.

The same doctrine has been uniformly maintained from the commencement of the Government. The absurdity of any other rule is manifest. If during the actual clash of arms, the courts were rightfully hearing evidence as to the fact of war, and either with or without the said juries, determining the question, they should have power to enforce their decision. In case of foreign conflicts neither belligerant would be likely to yield to the decision; and in case of insurrection, the insurgents would not cease their rebellion in obedience to a judicial decree. In short, the status of the country as to peace or war is legally determined by the political (department of the government) and not by the judicial department. When the decision is made the courts are concluded thereby, and bound to apply the legal rules which belong to that condition. The same power which determines the existence of war or insurrection, must also decide when hostilities have ceased—that is, when peace is restored. In a legal sense the state of war or peace is not a question *in pais* for courts to determine. It is a legal fact, ascertainable only from the decision of the political department.

The Fortune (1818) 3 Wheat. 246.
U. S. *v.* Palmer (1818) 3 Wheat. 610.
Nuestra Señora &c. (1819) 44 Wheat. 497.
63 Santisima Trinidad (1822) 7 Wheat. 283.
Rose *v.* Himely (1806) 4 Cranch, 241.
Foster *v.* Nelson (1829) 2 Peters, 253.

Under the Act of Congress of July 13th, 1861, the President of the United States, on the 16th day of August, 1861, proclaimed that the State of Tennessee was in a state of insurrection. The courts, in discussing the rights of the President to decide upon the necessities of such proclamation, and the period within which it should continue, said:

"The legal status thus determining must remain so long as the condition of hostilities continues. He (the President) has never made a counter proclamation, nor has peace been officially announced. As a legal condition that status (of insurrection) is independent of actual daily strife in arms. A legal condition of hostilities may exist long after the last battle has been fought between the opposing armies. That condition (of insurrection or rebellion) ceases when peace is concluded through competent authority; not before. * * * Within any construction which could be very well given to the President's proclamation, no part of that state (Tennessee) maintains as yet a loyal adhesion to the Union and Constitution. It is the duty of the President, however, to decide that point. Until he declares to the contrary, the court must hold that the legal condition of hostility continues. The exceptions in the proclamation, as far as made by the President, courts can and must enforce. But if it be correct, that by the terms of the proclamation, the President intended to devolve on the courts the duty of determining judicially the status of a state or part of a state by an inquiry into its loyalty or its occupation from time to time by the United States forces, irrespective of a decision thereon by
64 the executive, still courts could not then acquire the power. The limits upon their constitutional and legal functions could not thus be enlarged Political power could not be so delegated to the courts. They (the courts) can not be charged with any duties not judicial; 'judicial power' alone is invested in them (the courts) under the Constitution."

U. S. *v.* Packages (1862) 27 Fed. Case pp. 288, 289.

In the case of Druecker *v.* Solomon (21 Wis. 621; 94 Am. Dec. 571, 576, 577) the Supreme Court of Wisconsin, in an action for false imprisonment for the arrest and detention during a state of insurrection &c., the court cites and approves of the doctrine laid down by the Supreme Court of the United States in the case of Martin *v.* Mott (12 Wheat. 19) and holds that the action of the political department of the Government in such cases is final and conclusive against the judicial department.

John Marshall, for many years Chief Justice of the Supreme Court of the United States, in discussing the right of one department of the Government to interfere with the discretionary powers of another, said, in the case of Marbury *v.* Madison (1803) 1 Cranch. 137, 164;

"By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he has to use his own discretion, and is accountable only to his country in his political character, and to his own conscience.

* * * The subjects are political; they represent the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the Act of Congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that act, is to perform precisely to the will of the President; he is the mere organ by whom that will is indi-
65 cated. The acts of such an officer, as an officer, can never be examined by the courts. * * * The conclusion from this reasoning is that where the heads of departments are the political and confidential agents of the executive, merely to execute the will of the President or rather to act in cases in which the executive possesses a constitutional or a legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable."

In the case of Rice *v.* Austin (19 Minn. 103) the Supreme Court of Minnesota held that "the judical and executive departments of the Government are distinct and independent and neither is responsible to the other for the performance of its duties and neither can enforce the performance of the duties of the other." It may be said that in Minnesota this decision was based upon a constitutional provision. This is true, but the fact that the people of the state of Minnesota, by constitutional provision prohibited one independent department of the Government from interfering or attempting to administer the duties of another, all the more reenforces the doctrine contended for here. Many of the States do permit the judicial department by mandamus to direct the executive department to perform purely ministerial duties. In Minnesota, however, the judicial department will not attempt to coerce the performance of even ministerial duties on the part of the executive.

In the case of Luther *v.* Borden (7 How. 44) it was held that the decision and determination of matters of a purely political character by the executive or legislative department of the Government was binding on every other department of the Government and could not be questioned by a judicial tribunal. The dangers and difficulties which would grow out of the adoption of a contrary rule are pointed out by Chief Justice Taney in this case clearly and ably
66 Chief Justice Taney, referring to the power given to the President with reference to the right to decide whether it was necessary, on account of a possible invasion to call out the militia, said:

"By this Act (Act of Congress of 1795) the power to decide whether the exigency had arisen upon which the Government of the United States is bound to interfere is given to the President. * * * After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision is right? Can the court, while the parties are actually contending in arms for the possession of the government, call witnesses before it and inquire which part represent the majority of the people? If it could, then it would become the duty of the court (provided it came to the conclusion that the President had decided incorrectly) to discharge those who were arrested or detained by the

troops in the service of the United States or the Government which the President was endeavoring to maintain. If the judicial power extends so far, the guaranty contained in the Constitution of the United States is a guaranty of anarchy and not of order. Yet if this right does not reside in the court when the conflict is raging, if the judicial power is at that time bound to follow the decision of the political, it must be equally binding when the contest is over."

"It is said that this power in the President is dangerous to liberty and may be abused. All power may — abused if placed in unworthy hands; but it would be difficut, we think, to point out any other hands in which power would be more safe, and at the same time equally effectual. When citizens of the same state are in arms against each other, and the constituted authorities unable to execute the laws, the interposition of the United States must be prom-t or it is of little value. The ordinary course of proceedings in the courts of justice would be utterly unfit for the crisis, and the elevated
67 office of the President, chosen as he is by the people of the United States, and the high responsibility he can not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against the wilful abuse of power as human prudence and foresight could well provide. *At all events it is conferred upon him by the Constitution and laws of the United States and must, therefore, be respected and enforced in its judicial tribunals.*"

Shief Justice Taney here cites approvingly the case of Martin *v.* Mott.

In the case of Franklin *v.* State Board Examiners, (23 Cal. 173, 176) the Supreme Court of California decided "That the political department of a state government is the sole judge of the existence of war or insurrection, and when it declares either of these emergencies to exist, its action is not subject to review or liable to be controlled by the judicial department of the State."

In this case the court cited the cases of Martin *v.* Mott and Luther *v.* Borden.

This same doctrine was again recognized by the Supreme Court of California in the case of the People *v.* Pacheco, (27 Cal. 175, 223), not only resting its decision upon the case of Franklin *v.* State Board of Examiners, but also again cited and confirmed the case of Martin *v.* Mott. Luther *v.* Borden and Vanderheyden *v.* Young, 11 Johnson (N. Y.) 157.

Chief Justice Marshall, in the case of McCullough *v.* State of Maryland, (4 Wheat. 24) says:

"We think the sound construction of the Constitution must allow the national legislature that discretion with respect to the means by which the powers it confers are carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people.
68 * * * Such being the case, the determination of these questions by the political department of the Government must also necessarily be conclusive."

Chief Justice Taney, in the case of *ex parte* Marryman, 17 Federal

Cases, 144, (Fed. Case No. 9,487) said, in speaking of the power of the courts:

"It is true that in the case mentioned, Congress is of necessity the judge of whether the public safety does or does not require it (the suspension of the writ of *habeas corpus*) and their judgment is conclusive."

Chief Justice Taney, in the same decision, quotes the following language of Mr. Justice Story approvingly:

"It would seem as the power is given to Congress to suspend the writ of *habeas corpus* in the case of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body."

In the case of McCall *v.* McDowell (15 Federal Cases, p. 1235, Federal Case 8673), Judge Dady said:

"When the occasion arises—rebellion or invasion—whether the 'public service' requires the suspension of the writ or not is confided to the judgment of Congress, and their action in the premises is conclusive upon all courts and persons."

"The suspension enables the executive, without interference from the courts or the law, to arrest and imprison persons against whom no legal crime can be proved, but who may, nevertheless, be effectively engaged in forming the rebellion or inviting the invasion, to the im-inent danger of the public safety."

In the case of *ex parte* Field (5th Blatchford, 63) this same question arose in the State of Vermont, and the Supreme Court of
69 that state, relying upon the decision of Mr. Justice Story in Luther *v.* Borden and that of Chief Justice Taney in Martin *v.* Mott, decided that the President is the exclusive judge of the existence of the exigency authorizing him to call forth the militia and declare martial law, in pursuance of the power conferred on him by Act of Congress of 1795.

Judge Emmons, in the case of United States *v.* 1500 Bales of Cotton (Fed. Case No. 15,958), in discussing this general question said, quoting from a decision of Chief Justice Chase: "The belligerent relation having once been recognized by the political power, all the people of each state or district in insurrection must be regarded as enemies until, by the action of the *legislative and executive,* that relation is th-roughly and permanently changed.

"The statute devolves upon the President the political duty of determining whether armed force should be called out to put down insurrection in the states. It was for him to decide when the exigency occur-ed. The courts had no concern with it" * * * "Whether there was any necessity for the exercise of the power of the President to call out the militia the court could not determine. His decision was final. * * * If the judicial powers are thus extended, the guaranty in the Constitution of a republican form of government was a guaranty of anarchy, not of order. Equally incongruous results would follow if the courts, instead of the Government, were to decide when hostilities are ended and when trade and intercourse should be resumed."

Not only has it been decided in numerous cases that the
70 power to call out the militia and to suspend the writ of *habeas corpus* is entirely within *hte* discretion of the legislative and executive branches of the government, but, when the executive and legislative departments have decided that the conditions exist justifying these acts, the courts will presume that such conditions continue to exist until the same authority (legislative etc.)' have decided that such conditions no longer exist.

Judge Dillon, in the case of Philips *v.* Hatch, (Fed. Case No. 11,094) said:

"From the nature of the question, from the fair implication of the Act of July 13th, 1861, (an act authorizing the suspension of the writ of *habeas corpus*) from the confusion that would ensue from any other rule, it is the opinion of the court that the rebellion must be considered as in existence until the President declared it at an end in a proclamation."

Judge Emmons, in the above case, discussing this same question, said:

"These unquestioned doctrines have not been extemporized for the modern and exceptional exigencies of the late Rebellion. They belong to the jurisprudence of all countries and were adopted as part of that of our own from its earliest history. Our most conservative Judges, Marshall, Story and Taney, have been foremost in announcing them. No citizen would challenge the justness and necessity of this rule. Judges have their peculiar duties, which, if faithfuly and learnedly studied, have little tendency to make them familiar with
current and rapidly changing conditions upon which depend
71 the important political question of whether it is safe to relax, on the instant, military rule and restore intercourse and trade."

The following cases are also cited:

Brown *v.* Hist, Fed. Case No. 2011.
United States *v.* 100 Barrels of Cement, Fed. Case No. 15945.
Gelston *v.* Hoyt, 3 Wheat. 246.
The Divina Pastora, 4 Wheat. 52.
The Santisima Trinidad, 7 Wheat. 283.
Rose *v.* Himely, 4 Cranch, 241.
Foster *v.* Nelson, 12 Peters, 511.
Stewart *v.* Kahn, 11 Wallace, 493.
Mrs. Alexander's Cotton, 2 Wallace, 404.

For a general discussion, see
6th American Law Register, 766;
4 Chicago Legal News, 245.

No Government, past or present, has more carefully and watchfully guarded and protected, by law, the individual rights of life and property of its citizens than that of the Government of the United States and of the various States of the Union. Each of the three departments of the Government have had separate and distinct functions to perform in this great labor. The history of the United States, covering more than a century and a quarter, discloses the fact

that each department has performed its part well. No one department of the Government can or ever has claimed within its
72 discretionary power, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres, harmoniously working to maintain good government, peace and order, to the end that the rights of each citizen be equally protected. No one department can claim that it has a monopoly of these benign purposes of the Government. Each department has an exclusive field within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary limits and assume to act there. No presumption of an abuse of *these discretionary powers* by one department will be considered or entertained by another. Such conduct on the part of one department, instead of tending to conserve the Government and the rights of the people, would directly tend to destroy the confidence of the people in the Government and to undermine the very foundations of the Government itself.

For all of the foregoing reasons, the application for the writ of *habeas corpus* should be denied and it is so ordered.

(Signed) E. FINLEY JOHNSON.

Concurring:

(Signed) C. S. ARELLANO.
" VICTORINO MAPA.
" A. C. CARSON.

73 No. 2808.

Dissenting Opinion.

WILLARD, *J.*:

The question in the case is this: Have the Governor General and the Commission power to suspend the writ of *habeas corpus* when no insurrection in fact exists? If tomorrow they should suspend the writ in Manila, would that suspension be recognized by the courts? That in such a case they ought not to suspend the writ and that where no insurrection in fact exists they would have no right to do so, are propositions which have no bearing upon the case. The question is, Have they the power to do it?

Prior to the passage of the Act of Congress of July 1st, 1902, the Commission had that power. They could suspend the writ, take it away entirely from certain provinces, or repeal entirely the law which authorized it to be issued. They had absolute control over it. (*In re* Calloway, 1 Phil. Rep. page 11.)

By the decision of the majority in this case the Governor General and the Commission still have that power. The effect of this decision is to give them the same power which the Commission exercised before the passage of the Act of Congress of July 1st, 1902. In other words, that part of the Act which relates to the writ of *habeas corpus* has produced no effect. It is repealed by this decision, and Congress accomplished nothing by inserting it in the law. No construction which repeals it should be given to this

article. If a given construction leads to that result it seems
74 to me that it must be certain that the construction is wrong. No other argument to prove that it is wrong is needed. Congress must have intended that this provision should produce some effect. To hold that it has produced no effect is to defeat such intention.

But it is said that by the terms of the act, while the Governor General and the Commissioners have the power to suspend, the writ, they should not do it except in cases where insurrection in fact exists, and they being men of character and integrity, would not do it except in such cases. As the government is at present constituted this is undoubtedly true. This argument, however, is fully answered by what was said by the Supreme Court of the United States in the case of *Ex-Parte* Milligan, 4 Wallace 2, 125:

"This nation, as experience has proved, can not always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln."

With the exception of one case decided by the Supreme Court of Idaho, no authorities are presented involving directly the construction of the provision of the Constitution of the United States relating to the suspension of the writ of *habeas corpus,* which provision is substantially the same as the one embodied in the Act of Congress of July 1st, 1902.

That the judicial power has no authority to interfere with the executive power in the discharge of the duties imposed upon the latter by law is a proposition that no one denies. The question however, in this case is, Has the law conferred upon the executive the power to decide exclusively whether a state of insurrection exists or not?

75 In the case of Martin *v.* Mott, 12 Wheat. 19, 28, the court said that the construction which it gave to the Act of Congress authorizing the President to call out the militia "necessarily results from the nature of the power itself, and from the manifest object contemplated by the Act of Congress"—that is to say, in determining what the words of the law meant they relied almost entirely upon the nature of the power given by the law, and the object contemplated by it. Those are the things which should be considered in determining what construction is to be given to the provisions relating to *habeas corpus.* The power given by an Act of Congress to the President, who under the Constitution is the Commander in Chief of the Militia, when called into the service of the United States, to call such men into military service upon a sudden emergency, is in my opinion distinctly different from the power given by the Constitution to Congress to suspend the writ of *habeas corpus* so as to prevent a person already in custody from having the cause of his detention inquired into by a court of justice. The reasons which would lead a court to say that the former power had been unreservedly entrusted to the President should not, I think, be con-

sidered as controlling, when the extent of the latter power is under discussion.

The effect of the suspension of the writ of *habeas corpus*, and as it seems to me its manifest purpose, is to allow the government to commit an illegal act. It allows it to imprison a person who has committed no offense, and for whose arrest and detention no warrant has been issued by any competent court, and it leaves that person without redress at the time for this unlawful act. In the case at bar it appears from the return of the respondents that Barcelon is deprived of his liberty without due process of law in violation
76 of a provision of this same Act of Congress.

The privilege of the writ of *habeas corpus* was given to protect the citizen from such arbitrary and illegal acts of either the executive or the legislative power; the latter, that department which, according to Mr. Madison in No. 47 of The Federalist, "is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex."

It is probable that the people in adopting the Constitution, intended to give up to these departments of the government against which they needed protection, perhaps the most important right which could furnish that protection?

I do not think that the authors of the Constitution, or the authors of the Act of Congress intended to so place this right in the hands of these two departments that whether it should or should not be enjoyed by the citizens would depend exclusively upon their will and pleasure.

For the reasons above stated I dissent from the opinion of the court.

(Signed) CHARLES A. WILLARD.

77 UNITED STATES OF AMERICA:

In the Supreme Court of the Phillipine Islands.

R. G. No. 2808.

In the Matter of the Petition of FRED C. FISHER and CHARLES C. COHN for the Issuance of the Writ of *Habeas Corpus* in Favor of FELIX BARCELON.

Now come the petitioners Fred C. Fisher and Charles C. Cohn, for themselves and in representation of Felix Barcelon, and file their exception against the judgment given and made in the above entitled action denying the petition for the issuance of a writ of *habeas corpus* in favor of the said Felix Barcelon. Manila, P. I., Oct. 3rd, 1905.

(Sgd.) FRED C. FISHER,
(Sgd.) CHARLES C. COHN,
Petitioners and Attorneys for Felix Barcelon.

Filed in the Clerk's office of the Supreme Court, Philippine Islands, this 3rd of October, 1905, 4.45 p. m.

J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

OCTOBER 6, 1905.

This Supreme Court, in its session of the 5th day of the present month, ordered the following:

"Having considered the writing filed by Messrs. Fisher
78 and Cohn in the matter of the pe-ition for the writ of *habeas corpus* in favor of Felix Barcelon, excepting to the judgment given and made in said proceeding denying the aforesaid petition, the Court, duly informed, ordered that the exception of the petitioners be admitted for all lawful purposes and that the same be united to the Record, in order that it may appear of record and for other purposes," of which I notify you for your information.

Very respectfully,

(Sgd.) J. E. BLANCO,
Clerk Supreme Court, P. I.

To the Attorney General and to Messrs. Fisher and Cohn.

79 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

No. 2808.

In the Matter of the Application of FRED C. FISHER and CHARLES C. COHN for a Writ of *Habeas Corpus* in Behalf of FELIX BARCELON.

Petition for Writ of Error.

Fred C. Fisher and Charles C. Cohn, the above named applicants, conceiving themselves aggrieved of the order and decree made and entered in the above entitled cause under the date of September 30th, 1905, wherein and whereby it was and is ordered, adjudged and decreed that the writ of *habeas corpus* prayed for on behalf of said Felix Barcelon be denied, hereby pray for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands in order that the said order and decree may be revised by the said Supreme Court of the United States upon the assignment of errors which is presented with this petition, and they pray that this their petition for said writ of error may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were duly authenticated, may be transmitted to the said Supreme Court of the United States.

And the petitioners will ever pray.

October 19th, 1905.

FRED C. FISHER,
CHARLES C. COHN,
Attorneys for Applicant.

Service of a copy of this petition for writ as of Oct. 19th, 1905.

L. R. WILFLEY,
R. D. B.,
Att'y Gen.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 3rd day of January 1906.

J. E. BLANCO, *Clerk.*

80 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

No. 2808.

In the Matter of the Application by FRED C. FISHER and CHARLES C. COHN for a Writ of *Habeas Corpus* in Behalf of FELIX BARCELON.

Assignment of Errors.

The applicants file the following assignment of errors upon which they will rely for their prosecution of the writ of error in the above entitled cause.

I.

The Supreme Court of the Philippine Islands erred in denying the writ of *habeas corpus* as prayed for by petitioners.

II.

The Supreme Court of the Philippine Islands erred in holding that said court is not competent to try as a question of fact, the question of whether or not there exists an insurrection, rebellion or invasion, in order to determine the validity of the order suspending the privilege of the writ of *habeas corpus* in the place where the prisoner is detained.

III.

The Supreme Court of the Philippine Islands erred in holding that by the act of Congress of July 1. 1902 the Governor of the Philippine Islands, together with the United States Philippine Commission are the sole and exclusive judges of when and where in
81 the Philippine Islands, the privileges of the writ of *habeas corpus* may be validity suspended.

IV.

The Supreme Court of the Philippine Islands erred in holding that by the Act of Congress of July 1, 1902, the action of the Governor of the Philippine Islands, together with the United States Philippine Commission, in suspending the writ of *habeas corpus* in certain parts of said Islands, is not subject to judicial review and that said action is not subject to be annulled in the event that in-

surrection, invasion or rebellion does not exist as a fact in said parts of said Islands.

In order that the foregoing statement of errors may be and appear of record, the applicants present the same to the Court, and pray that such disposition may be made thereof as in accordance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

FRED C. FISHER,
CHARLES C. COHN,
Attorneys for Applicant.

Copy received as of Oct. 19, 1905.

L. R. WILFLEY,
R. D. E.,
Att'y Gen.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 3rd day of January 1906.

J. E. BLANCO, *Clerk.*

82 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorale Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a cause which is in the said Supreme Court of the Philippine Islands, before you, or some of you, wherein Fred C. Fisher and Charles C. Cohn appear as applicants and appellants on behalf of Felix Barcelon for a writ of *habeas corpus* to be directed against Colonel David J. Baker, Jr. and Captain John Doe Thompson, of the Philippines Constabulary, a manifest error hath happened to the great damage of the said applicants and appellants, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 3rd day of March, 1906, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 3 day of January,
83 in the year of our Lord nineteen hundred and six.

J. E. BLANCO,
[SEAL.] *Clerk Supreme Court P. I.*

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of.

E. FINLEY JOHNSON,
[SEAL.] *Associate Justice of the Supreme Court of the Philippine Islands.*

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 3rd day of January, 1906.

J. E. BLANCO, *Clerk.*

84 UNITED STATES OF AMERICA, *ss:*

To Colonel David J. Baker, Jr., and Captain John Doe Thompson:

You and each of you are hereby cited and adminished to be in and appear at the Supreme Court to be holden at Washington, within sixty days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Philippine Islands, wherein Fred C. Fisher and Charles C. Cohn appear as applicants for a writ of *habeas corpus* on behalf of Felix Barcelon directed against Colonel David J. Baker, Jr. and Captain John Doe Thompson to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of January, in the year of our Lord nineteen hundred and six.

E. FINLEY JOHNSON,
[SEAL.] *Associate Justice of the Supreme Court of the Philippine Islands.*

I admit the receipt of the above citation and accept service thereof this 13th day of January, 1906.

L. R. WILFLEY,
Atty. Gen., Attorney for Baker and Thompson.
Per R. D. B.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 15th day of January, 1906.

J. E. BLANCO, *Clerk.*

85 UNITED STATES OF AMERICA, *Philippine Islands.*

In the Supreme Court of the Philippine Islands.

In the Matter of the Application of FRED C. FISHER and CHARLES C. COHN for a Writ of *Habeas Corpus* in Behalf of FELIX BARCELON.

Bond on Writ of Error.

Know all men by these presents, That we, F. C. Fisher and Charles C. Cohn, as principals, and Enrique Brias and A. R. Roxas, as sureties, are held and firmly bound unto the Government of the

Philippine Islands in the full and just sum of Five Hundred Dollars ($500.00) U. S. Currency, for the payment whereof, to the Government of the Philippine Islands, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10th day of January, one thousand nine hundred and six.

Whereas, lately, at a session of the Supreme Court of the Philippine Islands, in a cause pending in said Court wherein application was made by F. C. Fisher and C. C. Cohn in behalf of Felix Barcelon for writ of *habeas corpus,* on the 30th day of September, 1905, and the said applicants having sued out a writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands to reverse the order and decree in said cause,

Now, the condition of the above obligation is such that if the said applicants shall prosecute the said writ of error to effect, and
86 shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

F. C. FISHER.
CHARLES C. COHN.
ENRIQUE BRIAS.
A. R. ROXAS.

UNITED STATES OF AMERICA, *Philippine Islands, ss:*

At the City of Manila, Enrique Brias and A. R. Roxas, sureties on the within obligation, being duly sworn, depose and say, each for himself, that he is a resident and property holder in the City of Manila and that he is worth more than the amount expressed in the said obligation as a penal sum, over and above all his debts and obligations exclusive of property exempt from taxation.

ENRIQUE BRIAS.
A. R. ROXAS.

Subscribed and sworn to before me this 10th day of January, 1906, with cedulas Nos. 14175 and 14178, dated January 27, 1905, respectively.

FLORENCIO GONZALES DIAS,
[SEAL.] *Notario Publico, El Nombramiento Termina el 31 de Diciembre de* 1906.

(Po. 20 Stamp.)

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 15th day of January, 1906.

J. E. BLANCO, *Clerk.*

Approved:
(Sgd.) E. FINLEY JOHNSON,
Associate Justice Supreme Court of Philippines.

87 UNITED STATES OF AMERICA, *Philippine Islands.*

In the Supreme Court of the Philippine Islands.

In the Matter of the Application of FRED C. FISHER and CHARLES C. COHN for Writ of *Habeas Corpus* in Behalf of FELIX BARCELON.

Stipulation.

It is hereby stipulated by and between counsel in the above entitled cause that the transcript of Record therein, on writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands shall be made up of the following papers:

1. Petition for writ of *habeas corpus* and exhibits.
2. Order to show cause.
3. Amended return to order to show cause and exhibits.
4. Authority to appear for applicant.
5. Order denying writ.
6. Exception to order.
7. Assignment of errors.
8. Petition for allowance of writ of error.
9. Writ and order.
10. Bond on writ of error.
11. Stipulation as to making up Record.

FRED C. FISHER,
CHARLES C. COHN,
Attorneys for Applicant.
L. R. WILFLEY,
R. D. B.,
Attorneys for Respondent.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 15th day of January, 1906.

J. E. BLANCO, *Clerk.*

88 UNITED STATES OF AMERICA, *Philippine Islands.*

In the Supreme Court of the Philippine Islands.

No. 2808.

In the Matter of the Application by FRED C. FISHER and CHARLES C. COHN for Writ of *Habeas Corpus* in Behalf of FELIX BARCELON.

Stipulation.

It is hereby stipulated and agreed by and between counsel in the above entitled cause that the transcript of record therein on writ of error to the Supreme Court of the United States contains full, true

and correct copies of all the papers appertaining to said cause which were designated in the stipulation of counsel filed in said cause.

F. C. FISHER,
CHARLES C. COHN,
Counsel for Applicant.
L. R. WILFLEY,
Counsel for Respondent.

Manila, January 15th, 1906.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 15th day of January, 1906.

J. E. BLANCO, *Clerk.*

89 UNITED STATES OF AMERICA, *ss:*

In obedience to the foregoing writ of error, I hereby transmit to the Supreme Court of the United States a true and complete transcript in English of the record and proceedings in the foregoing-entitled cause, this 16th day of January, 190–.

J. E. BLANCO,
[SEAL.] *Clerk Sup. Crt. P. I.*

Endorsed on cover: File No. 20,111. Philippine Islands Supreme Court. Term No. 609. Fred C. Fisher and Charles C. Cohn on behalf of Felix Barcelon, plaintiffs in error, *vs.* Colonel David J. Baker, Jr., and Captain John Doe Thompson. Filed March 1st, 1906. File No. 20,111.